Division 100 Division 100

DIVISION 100 - GENERAL PROVISIONS

It is understood and agreed that all of the provisions and requirements of DIVISION 100 shall be applicable to all contracts.

It is further understood and agreed that the requirements of Figure 1 at the end of Section 101 shall be applicable to all contracts on which the typical section(s) of the plans show construction of any element of the pavement structure or shoulder(s).

SECTION 101 - DEFINITIONS AND TERMS

Whenever terms not defined herein are used to identify geometric elements of the work, such terms shall be understood to have the meaning as established by the American Association of State Highway and Transportation Officials in the book entitled "AASHTO Highway Definitions" which is current at the time bids are received.

Where the following abbreviations and definitions are used in these specifications or other contract documents, they are to be construed the same as the respective expression.

American Association of Nurserymen

101.01--Abbreviations.

AAN

ASTM

AAR	Association of American Railroads
AASHTO	American Association of State Highway Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America
AIA	American Institute of Architects
AIEE	American Institute of Electrical Engineers
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
AITC	American Institute of Timber Construction
ANSI	American National Standards Institute
AOAC	Association of Official Analytical Chemists
API	American Petroleum Institute
APWA	American Public Works Association
ARA	American Railway Association
ARBA	American Road Builders Association
AREA	American Railway Engineering Association
ARTBA	American Road and Transportation Builders Association
ASCE	American Society of Civil Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers

American Society for Testing and Materials

AVTU Average Value per Time Unit

AWG American Wire Gage

AWPA American Wood Preservers Association

AWS American Welding Society

AWWA American Water Works Association

Code(NEC) National Electrical Code

CRSI Concrete Reinforcing Steel Institute

CS Commercial Standards, U. S. Department of Commerce

CSPI Corrugated Steel Pipe Institute
EIA Electronic Industries Association
EPA Environmental Protection Agency
ESFE Estimated State Furnished Excavation

FCP Fixed Contract Unit Price

FHWA Federal Highway Administration

FM Final Measure

FME Final Measure - Embankment

FSS Federal Specifications and Standards (General Services

Administration)

HRB Highway Research Board

Hz Hertz

ICEA Insulated Cable Engineers Association

ID Inside Diameter

IES Illuminating Engineering Society

IMSA International Municipal Signal Association

IPS Interior Pipe Size
IS Interim Specifications

ITE Institute of Transportation Engineers

LVM Loose Vehicular Measure

MAPA Mississippi Asphalt Pavement Association MDOT Mississippi Department of Transportation

MIL Military Specifications

MSG Manufacturers Standard Gauge

MUTCD Manual on Uniform Traffic Control Devices NACE National Association of Corrosion Engineers NAPA National Asphalt Pavement Association

NBC National Building Code

NBS U.S. National Bureau of Standards

NCHRP National Cooperative Highway Research Program

NEC(Code) National Electric Code

NEMA National Electrical Manufacturers Association

NPC National Plumbing Code NSF National Sanitation Foundation

NTB Notice To Bidders
OD Outside Diameter

OSHA Occupational Safety and Health Administration

PCI Prestressed Concrete Institute

RCRA Resource Conservation and Recovery Act

RAP Recycled Asphalt Pavement

SAE Society of Automotive Engineers

SAVE Society of American Value Engineering SOP The MDOT's Standard Operating Procedures

SP Special Provisions

SS Supplemental Specifications
SSPC Steel Structures Painting Council
TRB Transportation Research Board
UL Underwriters Laboratories, Inc.

UNC Upset National Coarse Threaded Bolts

UST Underground Storage Tank

101.02--Definitions.

Additive - A substance or agent added in small amounts to a basic ingredient of a mixture prior to mixing.

Admixture - A substance or agent added in small amounts to the basic ingredients of a mixture during the mixing process.

Advertisement - The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished.

Alternate Designs - Alternate designs of construction or construction and materials designated in the bid schedule of the proposal as Alternate Designs which must be pre-selected by the Contractor and indicated on the bid. Alternate Designs may contain Alternate or Optional Items.

Alternate Items - Alternate pay items of work, or materials and work designated in the bid schedule of the proposal as Alternate Items, with separate pay item numbers, and which must be pre-selected by the Contractor and indicated on the Contractor's bid.

Average Value per Time Unit (AVTU) - The computed average dollar value per time unit for each work phase, computed as being the contract dollar value of the work phase, divided by the number of time units designated for that phase by the length of the bar as set forth in the approved progress schedule.

Award - The acceptance by the Mississippi Transportation Commission of a proposal.

Base Course - The layer or layers of specified or selected material of designed thickness placed on a subgrade to support a pavement.

Basement Soils - That portion of the roadway in embankment areas below the

design soil and to the bottom of the embankment or undercut, whichever is lower, and that portion of the earthwork in cut areas below the design soil and to the bottom of any undercut or other treatment required, whichever is lower.

Bidder - An individual, partnership, firm or corporation formally submitting a proposal for the advertised work or materials.

Borrow - Suitable material from approved sources outside the roadway prism, used primarily for embankments.

Box Bridge - A box culvert having a clear distance between inside face of the end supports exceeding 20 feet measured along the centerline of the roadway.

Bridge - A structure, including supports, erected over a depression or an obstruction, as water, highway, or railway, and having a track or passageway for carrying traffic or other moving loads and having a length measured along the center of the roadway of more than 20 feet between undercopings of abutments or extreme ends of openings for multiple boxes.

Bridge Length - The length of a bridge structure is the overall length measured along the line of survey stationing back to back of backwalls of abutments, if present, otherwise end to end of the bridge floor; but in no case less than the total clear opening of the structure.

Bridge Roadway Width - The clear width measured at right angles to the longitudinal centerline of the bridge between the bottom of curbs or guard timbers or in the case of multiple height of curbs, between the bottoms of the lower risers.

Bridge Site - Unless otherwise specified in the contract, the bridge site shall be the entire area between the right-of-way lines and between lines paralleling the bridge ends and passing through the longitudinal extremities of the substructure or superstructure, whichever is greater.

Calendar Day - Any day shown on the calendar, beginning and ending at midnight.

Commission - The Mississippi Transportation Commission.

Conformity - The degree of perfection required for the materials furnished and the work performed, and determined:

- (a) In the case of a required "minimum" or "maximum" value of a measurable characteristic, as set out in Subsection 700.04.
- (b) In the case of a required non-measurable characteristic, as being

satisfactory to the Engineer.

Contract - The written agreement between the Mississippi Transportation Commission and the Contractor setting forth the obligations of the parties thereunder, including but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment.

The contract includes the invitation for bids, proposal, contract form and contract bond, specifications, supplemental specifications, interim specifications, general and detailed plans, special provisions, notices to bidders, notice to proceed, and also any agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

Contract Bond - The approved form of security, executed by the Contractor and the Contractor's Surety, guaranteeing complete execution of the contract and all supplemental agreements pertaining thereto and the payment of all legal debts pertaining to the construction of the project.

Contract Documents - All original or official papers relied upon as the basis, proof or support of the contract and shall include those papers stated in the definition of Contract.

Contract Item (Pay Item) - A specifically described unit of work for which a price is provided in the contract.

Contract Time - The period of time, including authorized extensions, allowed for completion of work under the contract.

Contract Unit Price - The price provided for in the contract for a specifically described unit of work.

Contractor - The individual, partnership, firm or corporation contracting with the Department for performance of prescribed work.

Control of Access - The condition where the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

Controlling Work - The work or construction operations normally expected to be in progress as determined by the Engineer after careful consideration of the approved progress schedule.

County - The county in which the work is to be done.

Cross Slope - The rate of transverse slope in a roadbed element.

Culvert - Any structure not classified as a bridge which provides an opening under the roadway.

Department's Standard Operating Procedures - The Department's Standard Operating Procedures are the rules, regulations, instructions and policies, promulgated by the Commission acting through the Executive Director or authorized representative and on file in the Central Records Section of the Support Services Division.

Department - The Mississippi Department of Transportation.

Dependent Pay Items - Those pay items such as maintenance of traffic, mobilization, and construction stakes for which the amount of payment allowed on progress estimates may be based on the amount earned on other pay items.

Design Grade - Design grade is an intermediate control grade at a vertical distance, as established on the typical section of the plans for the various intermediate courses, below profile grade.

Design Soil - That portion of the roadbed consisting of the top three feet of untreated or treated soils in excavated sections and embankments.

Direct Pay Items - Those pay items for which payment is based on the quantity of the item completed.

Documentation - Written evidence recorded by an authorized individual or employee of either party to the contract of facts or conditions relating to a particular contractual matter.

Elements of Geometric Design - Those geometric elements of the highway as are defined in the "AASHTO Policy on Geometric Design" in effect at the time bids are received.

Engineer - The Chief Engineer of the Department, acting directly or through a duly authorized representative(s), who is responsible for engineering supervision of the construction.

Equipment - All machinery and equipment, together with the necessary supplies for upkeep and maintenance, and all tools and apparatus necessary for the proper construction and acceptable completion of the work.

Executive Director - The Executive Director of the Mississippi Department of Transpiration acting directly or through authorized representatives.

Extra Work - An item of work not provided for in the contract as awarded, or an item of work provided for in the contract the nature or character of which is

changed by the Engineer such as to justify a price adjustment, either of which is found by the Department to be essential to the satisfactory completion of the contract within its intended scope.

Fixed Contract Unit Price - When the bid schedule of the proposal form indicates a fixed contract unit price (FCP), this price shall become the contract price for that item and shall be used in determining the total amount of the proposal.

Hazardous Waste - Wastes that are regulated or "listed" under RCRA (40 CFR 261), or are ignitable, corrosive, reactive, or toxic.

Hertz - A measure of the length of a cycle of alternating current expressed as the number per second.

Highway, Street, or Road - A general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way.

Holidays, Legal - In the State of Mississippi, holidays occur on:

January 1 - New Year's Day

Third Monday in January - Robert E. Lee and Dr. Martin Luther King, Jr.'s Birthday

Third Monday in February - Washington's Birthday

Last Monday in April - Confederate Memorial Day

Last Monday in May - National Memorial Day and Jefferson Davis' Birthday

July 4 - Independence Day

First Monday in September - Labor Day

November 11 - Armistice (Veterans') Day

Thanksgiving Day - As Proclaimed

December 25 - Christmas Day

When a legal holiday falls on a Saturday or Sunday, the succeeding Monday will be observed as a legal holiday.

In-Grade - The top course or portion of the work which is in place at the time a subsequent material or course is to be placed thereon.

In-Grade Preparation - In-grade preparation is the preparation of material in place to receive other materials or processing required in super-imposed construction.

Inspector - The Engineer's authorized representative assigned to make detailed inspections of contract performance.

Interim Specifications - Interim Specifications are contract provisions other than Standard and Supplemental Specifications approved for general use in all applicable contracts until changes in technology or other conditions indicate revisions should be made for subsequent contracts.

Intermediate Course - A combination of graded aggregate and bituminous material which constitutes the lower layer or layers of a flexible pavement, but not part of the base course.

Invitation for Bids - The advertisement for proposals for all work or materials on which bids are required. The advertisement will indicate with reasonable accuracy the quantity and location of the work to be done or the character and quantity of the material to be furnished and the time and place of the opening of proposals.

Laboratory - The testing laboratory of the Department or any other testing laboratory which may be designated by the Engineer.

Legend - The words, letters and arrows, and other symbols or markings shown on the plans and designated as legend, required to be placed on the surface of a pavement in the form of paint and glass beads, thermoplastic and glass beads or other similar specified materials, to serve as pavement markings.

Local Traffic - Traffic whose origin or destination is adjacent to that part of the highway under construction.

Major and Minor Contract Items - A major item of work shall be defined as an item whose total monetary value, determined by multiplying the proposal quantity by the contract unit price, is equal to or greater than ten percent of the original total contract amount. Unless otherwise specifically shown in the contract, all other items shall be considered minor items. Minor items shall become major items when increased to the extent that the total monetary value of such item at the original contract unit price is equal to or greater than ten percent of the original total contract amount.

Materials - Any substances specified for use in the construction of the project and its appurtenances.

Notices to Contractors - Pre-bidding notices to prospective bidders, including the advertisement and other pertinent pre-bid information labeled as Notice to Contractors.

Notice to Bidders - All notices, issued to the prospective bidders, pertaining to or establishing requirements governing the submission of proposals, quantities or qualities of materials or work, the performance of the work, or payment therefor.

Notice to Proceed - Written notice to the Contractor to proceed with the contract work including, when applicable, the date of beginning of contract time.

Omitted Section - A section within the designated project limits in which no work, excluding construction signing, approaches and/or temporary connections, is to be performed, and the Contractor does not have any responsibility for maintenance of the roadway or traffic unless specifically provided for in the contract.

Optional Items - Items listed in the bid schedule of the proposal which are considered to be comparable for the purpose intended, and the Contractor is required to make a selection prior to or at the time of execution of the contract.

Pavement - The portion of the roadbed constructed upon the base course and specifically constructed as the contact element for vehicular traffic.

Pavement Structure - The combination of a pavement and a base course placed on a subgrade to support the traffic load and distribute it to the roadbed.

Plans - The approved plans, profiles, typical cross-sections, working drawings and supplemental drawings, or exact reproduction thereof, which show the location, character, dimensions, and details of the work to be done. When the contract does not have an official set of plans, reference to the plans shall mean the contract documents.

Profile Grade - The trace on a vertical plane intersecting the top surface of the proposed wearing surface as shown on the plans or established by the Engineer, usually along the longitudinal centerline of the roadbed. Profile grade means either elevation or gradient of such trace according to the context.

Progress Schedule - A bar graph showing the work phases under the contract and each bar represents a controlling phase of the work. The bars show the planned sequence of operations and the time at which each of the phases is to begin and end. The schedule will be developed by the Department or by the Contractor with Department approval.

Project - A specific section of highway or other prescribed limits of work as described by the plans and contract documents including approaches and/or temporary connections together with all appurtenances and construction to be performed thereon under the contract.

Proposal - The offer of a bidder, on the prescribed form, to perform the work at the prices quoted.

Proposal Form - The approved form on which the Department requires bids to be prepared and submitted for the work.

Proposal Guaranty - A certified check, cashier's check or bid bond furnished with the bid to guarantee that the bidder will enter into a contract for the work and furnish acceptable bond if the Contractor's bid is accepted.

Quantity Adjustment - A modification of contract quantities covering increases or decreases resulting from plan errors, omissions or changes necessary to carry out the intent of the plans.

Questionnaire - The specified forms on which the Contractor shall furnish, when requested, information as to the Contractor's ability to perform and finance the work.

Resident or Project Engineer - The Engineer assigned by the Chief Engineer and bonded to the State to have immediate charge of the engineering details and the responsibility and authority for on-the-job administration necessary for the satisfactory completion of the work in accordance with the contract.

Retainage - A general term denoting funds withheld from partial payments.

Right-of-Way - A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to a highway and its appurtenances.

Roadbed - The graded portion of a highway within top and side slopes prepared as a foundation for a pavement structure and shoulders.

Roadside - A general term denoting the area adjoining the outer edge of a roadway. Extensive areas between the roadways of a divided highway are also considered to be roadside.

Roadside Development - Those items necessary to the complete highway which provide for a preservation of landscape materials and features; the rehabilitation and protection against erosion of all areas disturbed by construction through seeding, sodding, mulching and the placing of other ground covers; and such suitable planting, other improvements and public facilities as may increase the effectiveness and usefulness and enhance the appearance of the highway.

Roadway - All surface portions of the highway between shoulder lines. Divided highways are considered to have two roadways.

Roadway Structure - All vertical and horizontal elements of the work, exclusive of bridges, designed to provide and support the roadway.

Shoulders - The portion of the roadway contiguous with the traveled way for the lateral support of the other elements of the pavement structures, and for emergency use of stopped vehicles.

Sidewalk - That portion of the road, highway, or street primarily constructed for use by pedestrians.

Special Provisions - Additions and revisions to the Standard and Supplemental Specifications covering conditions peculiar to an individual project, and included in the proposal assemblies.

Specifications - A general term applied to all directions, provisions and requirements pertaining to performance of the work.

Specified Completion Date - The date on which the contract work is specified to be completed.

State - The State of Mississippi acting through its authorized representative.

Structures - Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation drains, and similar features which may be required in the work.

Subcontractor - An individual, partnership, firm, or corporation to whom the Contractor, with the written consent of the Executive Director, sublets part of the contract.

Subgrade - The top surface of a design soil upon which the pavement structure and shoulders are constructed.

Substructure - Those parts of a bridge below the bearings of simple and continuous spans, below the bottom surfaces of concrete box girder spans in which the piers form an integral part of the span-pier unity, below skew-backs of arches, below tops of footings of rigid frames, and below wingwalls of abutments.

Superintendent - The Contractor's authorized representative in responsible charge of the work.

Superstructure - All parts of a bridge above and exclusive of the substructure.

Supplemental Agreement - A written agreement on a form provided by the Department, between the Contractor and the Commission with the assent of the Contractor's Surety and the approval of all agencies involved, covering alterations or unforeseen work necessary for the completion of the work within the intent of the contract.

Supplemental Specifications - Additions to the Standard Specifications that are adopted subsequent to issuance of this book, and which are printed in volume form and issued under the title of "Supplemental Specifications," and considered

as part of the Standard Specifications.

Surety - A corporate body, qualified under the laws of Mississippi, which is bound with and for the successful bidder by a "contract bond" to guarantee acceptable performance of the contract and payment of all legal taxes and debts pertaining to the construction of the project, including payment of State Sales Tax as prescribed by law, and any overpayment made to the Contractor.

Temporary Structures - Structures required to maintain traffic while the Contractor constructs permanent structures. The temporary structure shall include the earth approaches thereto unless otherwise specified.

Time Unit - A division of the total contract time allowed, pro-rated monthly on the basis of the normal earning power for an eight-hour unit of work.

Titles (or Headings) - The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

Township, Town, City or District - A subdivision of the county used to designate or identify the location of the proposed work.

The Work - The furnishing of all labor, materials, equipment and incidentals necessary or convenient to the successful completion of the project and the carrying out of the duties and obligations imposed by the contract.

Travelled Way - A portion of the roadway improved, designed or ordinarily used for vehicular travel, exclusive of shoulders or berms.

Underground Storage Tanks - Any one or combination of tanks, including underground pipes connected thereto, which are used to contain an accumulation of regulated substances and the volume of which, including underground pipe volume, is ten percent or more beneath the surface of the ground.

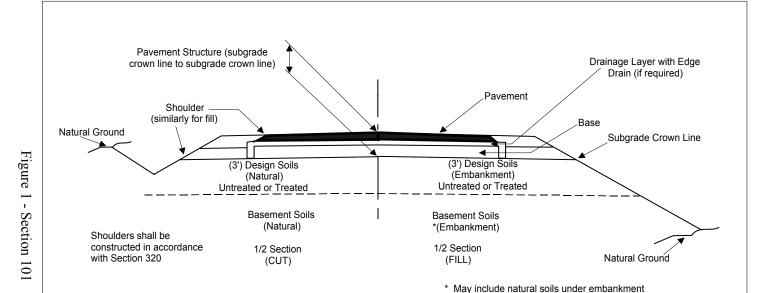
Wetlands - As defined in EPA and Corps of Engineer's (Corps) regulations and clarified in the Corps 1987 <u>Wetlands Delineation Manual</u>, or sequent Federal wetland delineation manuals.

Working Drawings - Stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, bending diagrams for reinforcing steel, or any other supplementary plans or similar data which the Contractor is required to submit to the Engineer for approval.

Work Order - A written order, signed by the Engineer, of contractual status requiring performance by the Contractor without negotiation of any sort.

Work Phase - A contract item or group of associated items that should be in progress at the time as a controlling phase for the orderly completion of the work within contract time. See Progress Schedule.

101.03--Presumption. To avoid repetition of expressions, it is provided that any directive, action or opinion that is not so denoted shall be understood to be followed by the words "by the Engineer" or "to the Engineer."



In-Grade preparation shall be performed in accordance with Section 321 prior to Placement of the Pavement Structure.

Vertical dimensions of the roadway structure indicated on the typical section of the plans are for convenience in establishing design grade at the top and botom of respective course, with reference to profile grade. They indicate design thicknesses, are not specific requirements for limits of course thickness and are subject to the tolerances set forth for the respective courses of work.

if these soils afffect the structural design

SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS

102.001--Advertisement. In conformity with State law, the Commission will publish a Notice to Contractors giving notice of a request for bids, this notice will become one of the contract documents if award is made.

The advertisement will state the time and place for submission of sealed proposals; the location and description of the proposed work; estimates of the quantities and kinds of work to be performed or materials to be furnished and a schedule of pay items for which unit bid prices are asked; specified contract time; and instructions to bidders regarding proposal forms, basis of award, proposal guaranty required, plans, specifications, labor requirements, special provisions and other pertinent information.

102.01--Prequalification of Bidders. Prospective bidders will be required to file with the Department a list of persons authorized to bind the company in all matters. Other information may be required from time to time before issuing proposals.

The attention of prospective bidders is directed to all fees and taxes required for the privilege of doing business within the State of Mississippi.

As a condition precedent to the opening of a bid, the total amount of which is equal to or in excess of \$50,000.00 and financed 100% with State funds, the bidder must have a certificate of responsibility issued by the Mississippi State Board of Public Contractors or a similar certificate issued by another state recognizing such certificate issued by the State of Mississippi. The Bidder's Certificate of Responsibility number or a statement signifying that the bid is not in excess of \$50,000.00 must be shown on the outside of the sealed envelope containing the bid proposal.

When two or more persons, firms or corporations are submitting a joint venture, each of the persons, firms or corporations may be required to comply with the above prequalification requirements.

102.02--Contents of Proposal Forms. The proposal forms, designated as Section 905 of the contract documents, will state the location and description of the contemplated construction, will show estimates of the kinds and quantities of work to be performed or materials to be furnished, and will have a schedule of items for which unit bid prices are invited. It will state the time in which the work must be completed. The proposal will also include special provisions and requirements which are not contained in the Standard Specifications or required modifications thereto.

All papers bound with, attached to, or designated for addition or substitution in the proposal are considered a part thereof and must not be detached or altered

when the proposal is submitted.

The plans, specifications and other documents designated in the proposal shall be considered a part as if attached to and included in the proposal.

The prospective bidder will be required to pay the Department the sum stated in the Notice to Contractors for each copy of the proposal form.

102.03--Issuance of Proposal. Except as hereinafter set forth, the Department will, upon request, furnish the prospective bidder with a proposal. The Department reserves the right to refuse to issue a proposal to a prospective bidder for the following reasons:

- (a) Lack of competency and adequate machinery, plant, or other equipment, as revealed by the information obtained as provided in Subsection 102.01 or other determinations made by the Department.
- (b) Uncompleted work which, in the judgment of the Department, might hinder or prevent the prompt completion of additional work if awarded.
- (c) Failure to pay, or satisfactorily settle, all bills due for labor and material on former contracts in force at the time of issuance of proposals.
- (d) Unsatisfactory performance on previous contracts.
- (e) Failure to promptly reimburse the Department for any overpayment that might have occurred.
- (f) Debarment of a prospective bidder or any of its corporate officers or principal owners by the Mississippi Transportation Commission.

102.04--Interpretation of Quantities in Bid Schedule. The quantities appearing in the bid schedule are approximate only and have been prepared for the comparison of bids. Payment to the Contractor will be made only for the actual quantities of work performed and accepted or materials furnished and accepted in accordance with the contract. The scheduled quantities of work to be done and materials to be furnished may each be increased, decreased, or omitted as hereinafter provided.

102.05--Examination of Plans, Specifications, Special Provisions, Notices to Bidders and Site of Work. It is the intent that the Department will prepare full, complete, and accurate plans and specifications giving directions that will enable any competent contractor to carry them out. The bidder is required to examine carefully the site of the proposed work, the proposal, plans, specifications, special provisions, notices to bidders and contract forms before submitting a proposal. The submission of a bid shall be considered prima facie evidence that

the bidder has made such an examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the plans, standard specifications, supplemental specifications, notices to bidders, special provisions, contract, and the Federal, State, and local laws which will in any way affect the execution of the work. All contracts are subject to the provisions of Sections 65-1-89 and 65-1-91, Mississippi Code of 1972, Annotated.

Bidders may inspect records of the Department as to investigations made, subject to the conditions set forth herein.

Boring logs and other records of subsurface investigations are available for inspection by bidders. It is understood that such information was obtained and is intended for Department design and estimating purposes only. It is made available to bidders so they may have access to identical subsurface information available to the Department and is not intended as a substitute for personal investigation, interpretations and judgment of the bidders.

In order to make the most effective use of available engineering personnel, the Department is unable to assign engineering responsibilities at the time of contract preparation; however, the District Construction Engineer will, by appointment, personally be available or will arrange for representative to be available to lend assistance to prospective bidders for plan-in-hand review of the proposed work features, and, if desirable, field inspection of the site of the proposed work. The Resident or Project Engineer for the contract will be assigned as soon as the Department can reasonably make an appropriate determination.

102.06--Preparation of Proposal. The bidder's proposal shall be submitted upon the forms furnished by the Department and shall enter in figures a unit price and extension in the appropriate columns for each bid item exclusive of those items for which a fixed contract unit price and the extension are shown. Lump sum bid items are to be bid as an item total only since a unit price is not required. The bidder shall also enter where indicated the subtotal amount for each of the various divisions and the total amount of the proposal which shall also include the extensions of the items with a fixed contract unit price. In case of discrepancy between a unit price and the extension, the unit price will govern and the extension along with the total amount of the proposal will be corrected. All the figures shall be in ink or typed.

When the bid schedule contains a fixed contract unit price (FCP) for an item, this price shall be the contract unit price for the item and no alteration shall be made by the bidder.

When an item in the proposal contains a choice to be made by the bidder, the bidder shall indicate the choice in accordance with the INSTRUCTION TO BIDDERS in Section 905 - Proposal; reference is made to Alternate Designs, Alternate Items, and Optional Items as defined in Subsection 101.02.

Where the bid schedule lists alternate designs or alternate items, the one alternate bid shall be designated by drawing a line or lines through other listed alternate(s) as provided, and thereafter no further choice will be permitted.

Bid sheets generated by the Department's Electronic Bid System (EBS) along with a completed proposal package will constitute the official bid and shall be signed on the last sheet of the EBS generated bid sheets and delivered to the Department in accordance with the provisions of Subsection 102.09.

Bidders are cautioned that using older versions of the EBS will result in improperly printed bid sheets. The latest version of the EBS can be obtained at no cost from the MDOT Contract Administration Division or at the MDOT website, www.gomdot.com.

If bidders submit EBS generated bid sheets, then the bid sheets included in the proposal should not be completed. The EBS generated bid sheets should be stapled together and included in the bid proposal package in the sealed envelope. If both the forms in the proposal and the EBS generated bid sheets are completed and submitted, only the EBS generated sheets will be recognized and used for the The diskette containing the information printed on the EBS generated bid sheets should be placed in the pouch located on the inside of the front cover of the bid proposal package. Bid sheets printed from the EBS should be a representation of the data returned on the diskettes. To have a true representation of the bid sheets, the Bidder must copy the inputted unit prices back to the diskette by using the option titled "Copy Project File To Floppy Disk" from the drop-down menu under "Projects". Otherwise, the unit prices bid will not be recorded to the diskette. Bidders are cautioned that failure to follow proper diskette-handling procedures could result in the Department being unable to process the diskette. Any modification or manipulation of the data contained on the diskette, other than entering unit bid prices, will not be allowed and will cause the Contractor's bid to be considered irregular.

It is the responsibility of every bidder to check for any addendum or modification to the contract document(s) for which they intend to submit a response. It shall be the bidder's responsibility to be sure they are in receipt of all addenda, pre-bid conference information, and/or questions and answers provided at, or subsequent to, the pre-bid conference, if any are issued.

The Mississippi Transportation Commission has no responsibility for defects, irregularities or other problems caused by the use of electronic media. Operation of this electronic media is done at the sole risk of the user.

When the bid schedule lists optional items, the Contractor's selection may, but is not required to, be made at the time of bidding. For optional items not preselected, the Contractor's selection shall be made prior to or at the time of execution of the contract.

Each proposal issued will contain duplicate Certification regarding debarment, suspension, and other responsibility matters to be completed by the bidder. The Certification must be sworn to and shall be under penalty of perjury and bidders are cautioned to read and understand its contents in entirety before execution.

The Contractor shall provide immediate written notice to the Contract Administration Engineer Division at any time, prior to or after award, that it is known a certification was erroneous when executed or has become erroneous by reason of changed circumstances.

Failure on the part of the bidder to execute the Certification will result in the proposal being rejected.

The bidder's proposal must be signed with ink by the individual, by one or more members of the partnership, by one or more members or officers of each firm representing a joint venture, or by one or more officers of a corporation; or by an agent of the Contractor legally qualified to bind the Contractor and acceptable to the State. If the proposal is made by an individual, the individual's name and address must be shown; by a partnership, the name and address of each partnership member must be shown; as a joint venture, the name and address of each member or officer of the firms represented by the joint venture must be shown; by a corporation, the name of the corporation and the business address of its corporate officials must be shown.

The address stated on the proposal shall be the bidder's permanent address until changed by written notice to the Executive Director. All notices provided for in the contract shall be considered as delivered to the Contractor when mailed or delivered to such address.

102.07--Irregular Proposals. Proposals will be considered irregular and may be rejected for any of the following reasons:

- (a) If the proposal is on a form other than that furnished by the Department, or if the form is altered or any part thereof is detached, except as allowed in Subsection 102.06.
- (b) If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- (c) If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
- (d) If the proposal does not contain a unit price and extension for each pay item, except in the case of alternate pay items and when the unit of measurement is lump sum.

(e) If the proposal, Section 905, does not contain acknowledgement of receipt and addition to the proposal and contract documents of all addenda issued prior to opening of bids.

- (f) Failure to execute required affidavits, certificates, etc., and furnish proposal guaranty.
- (g) The Mississippi Transportation Commission reserves the right to reject any or all proposals, to waive technicalities or irregularities, or to advertise for new proposals, and the decision of the Commission to reject any bid or proposal shall not be cause for any liability or damage against the Commission, the Department, any of its officers or employees.
- **102.08--Proposal Guaranty.** No proposal will be considered unless accompanied by certified check, cashier's check or bid bond, made payable to the State of Mississippi, in an amount of not less than five percent of the total amount of the proposal offered. The guaranty shall be evidence of good faith that, if awarded the contract, the bidder will execute the contract and give contract bond as stipulated in Subsection 103.05 and as required by law.

If a bid bond is offered as guaranty, the bond must be on a form approved by the Executive Director, made by a Surety acceptable to the Executive Director and signed or countersigned by a qualified Mississippi resident agent and the bidder.

- 102.09--Delivery of Proposals. Unless otherwise specified, each proposal shall be submitted sealed in a special envelope furnished by the Department. The blank spaces on the envelope shall be filled in correctly to clearly indicate its contents. When an envelope other than the special one furnished by the Department is used, it shall be of the same general size and shape and be similarly marked to clearly indicate its contents. Proposal Forms are non-transferable and no name or names of interested parties may be shown other than those to whom the proposal was issued. When sent by mail, the sealed proposals shall be mailed to the Department at the address and in care of the official in whose office the bids are to be received. All proposals shall be filed prior to the time and place specified in the Notice to Contractors. Proposals received after the time for opening of bids will be returned to the bidder unopened.
- **102.10--Withdrawal or Revision of Proposals.** A bidder may withdraw or revise a proposal after it has been deposited with the Department, provided the Executive Director has received, in writing or by telegram, the request for such withdrawal or revision prior to the time set for opening proposals.
- **102.11--Combination Bids.** Combination bids which combine two or more individual projects may be submitted by stating in writing on each project proposal to be considered in the combination, one of the following:

(a) That the bidder is bidding on "All or None" of the work for designated proposals. The Department will evaluate all bids on these proposals and make awards based on the bids most advantageous to the State.

- (b) The reduction the bidder will make in the unit price of one or more of the items in any or all of the proposals if awarded the combination; however, the bidder will not be permitted to make a reduction in any unit price that may be fixed by the Department in the proposal. The Department will select from the proposals submitted the individual or combination bids most advantageous to the State.
- (c) That the bidder is bidding on a number of projects but desires to be awarded work not to exceed a specified total amount or a specified number of contracts. The Department will select from the bidder's proposal those which are most advantageous to the State within its specified amount or total number of contracts.

Combination bids which state that a lump sum shall be deducted from the final estimate or retained percentage, or that a reduction in prices shall be made on a percentage basis, or that states that award of a job is contingent upon being awarded another job will not be accepted and the bids with which such a letter is submitted will be considered irregular and rejected.

- **102.12--Public Opening of Proposals.** Proposals will be opened and read publicly at the time and place indicated in the proposal. Bidders, their authorized agents, and other interested parties are invited to be present.
- **102.13--Disqualification of Bidders.** Either of the following reasons may be considered as being sufficient for the disqualification of a bidder and the rejection of the bidder's proposal or proposals:
 - (a) More than one proposal for the same work from an individual, partnership, firm or corporation under the same or different name(s). However, the Commission may accept proposals on construction contracts from commonly owned but independently managed companies, so long as each bid is not the result of collusion and is accompanied by the required certificate regarding collusion.
 - (b) Evidence of collusion among bidders. Participants in such collusion will receive no recognition as bidders for any future work of the Department until reinstated as a qualified bidder.
- **102.14--Material Guaranty.** At the option of the Department, the successful bidder shall be required at any time before or after the award or execution of the contract to furnish a complete statement of the origin, composition and manufacture of any or all materials to be used in the construction of the work and

shall provide the Department with access to all sources of materials for sampling and testing to determine their quality, uniformity and fitness for the work in accordance with the contract.

SECTION 103 - AWARD AND EXECUTION OF CONTRACT

103.01--Consideration of Proposals. After the proposals are opened and read, they will be compared on the basis of the summation of the products of the quantities shown in the bid schedule and the unit prices bid. The results of comparisons will be immediately available to the public. In the event of a discrepancy between any unit price and its extension, the unit price shall govern.

Resident Contractors actually domiciled in Mississippi which may be corporate, individuals or partnerships are to be granted preference over nonresidents in awarding of contracts financed 100% with State funds as provided herein.

In consideration of contract proposals which are equal to or in excess of \$50,000 and financed 100% with State funds, a nonresident bidder domiciled in a state having laws granting preference to local Contractors will be considered for such contracts on the same basis as the nonresident bidder's state awards contracts to Mississippi Contractors bidding under similar circumstances. nonresident Contractor submits a bid equal to or in excess of \$50,000 on a contract financed 100% with State funds, a copy of the current laws from the state of domicile and an explanation thereof pertaining to treatment of nonresident Contractors shall be attached. If no preferential treatment is provided for Contractors in the state of domicile and contracts are awarded to the lowest responsible bidder, a statement to this effect shall be attached. Should the attachment not accompany the bid when submitted, the Contractor shall have 10 days following the opening of the bids to furnish the required information to the Contract Administration Engineer for attachment to the bid. As used herein, the term "resident Contractors" includes a nonresident person, firm or corporation that has been qualified to do business in this State and has maintained a permanent full-time office in the State of Mississippi for two years prior to January 1, 1986, and the subsidiaries and affiliates of such a person, firm or corporation.

103.02--Award of Contract. The award of a contract, if awarded, will be made within 60 calendar days after the opening of proposals to the lowest responsible, except as provided in Subsection 103.01 for preferential treatment situations, and qualified bidder whose proposal complies with all the requirements prescribed. The award of contracts involving the expenditure of Federal funds is contingent upon concurrence of the Federal Agency whose funds are being used. The successful bidder will be notified of the award by letter mailed to the address shown on the proposal.

103.03--Cancellation of Award. The Department reserves the right to cancel the award of a contract any time prior to the execution by all parties without liability against the Commission, Department, or any of its officers or employees.

103.04--Return of Proposal Guaranty. Bid bonds will not be returned.

Certified checks or cashier's checks submitted as proposal guaranties, except those of the two lowest bidders, will be returned following the opening and checking of the proposals. The retained proposal guaranty of the unsuccessful of the two lowest bidders will be returned within ten days following the award of contract and that of the successful bidder will be returned after a satisfactory contract bond has been furnished and the contract has been executed.

In the event no award is made within 30 days after the opening of bids, the Executive Director may permit the successful bidder to replace the certified check or cashier's check with a satisfactory bidder's bond.

Should no award be made within 60 calendar days, all proposals will be rejected and all guaranties returned unless the lowest responsible bidder, at the request of the Commission, agrees in writing to a longer delay.

103.05--Requirement of Contract Bond. Prior to the execution of the contract, the successful bidder shall execute and deliver to the Executive Director a contract bond or bonds in a sum equal to the full amount of the contract. In the event of award of a joint bid, each individual, partnership, firm or corporation shall assume jointly the full obligations under the contract and contract bond. The form of the bond(s) shall be that provided by or acceptable to the Department. The bond(s) shall be negotiated for, procured from and the premium paid to a qualified Mississippi resident agent of the Surety. The bond shall be signed or countersigned by a Mississippi resident agent and also bear the signature of an "attorney-in-fact" of the surety. Reference is made to Section 31-5-51 et seq of the Mississippi Code of 1972, Annotated, and other State statutes applicable thereto.

103.06--Blank.

103.07--Execution and Approval of Contract. The successful bidder to whom the contract has been awarded shall sign and file with the Executive Director the contract and all documents required by the contract within 10 days after the contract has been mailed to the bidder. The contract may require certain documents be submitted at an earlier date, in which case, those documents shall be submitted within the time frame specified. If the contract is not executed by the Department within 15 days following receipt of the signed contract and all necessary documents, the bidder shall have the right to withdraw the bid without penalty. No contract is in effect until it is executed by all parties.

103.08--Failure to Execute Contract. Failure of the bidder to execute the contract and file acceptable bond and/or other required documents within 10 days shall be just cause for the cancellation of the award and forfeiture of the proposal guaranty which shall become the property of the Department, not as a penalty but in liquidation of damages sustained. Award may then be made to the next lowest responsible bidder, or the work may be readvertised at the discretion of the Department.

SECTION 104 - SCOPE OF WORK

104.01--Intent of Contract. The intent of the contract is to provide for the execution, construction, and completion in every detail of the work described, and to compensate the Contractor for all acceptable work performed in accordance with the provisions of the contract. The Contractor shall furnish all labor, materials, equipment, supplies, transportation, supervision, methods and procedures necessary to complete the work in accordance with the plans, specifications and terms of the contract.

104.02--Alterations of Plans or Character of Work. Except as may be necessary to satisfactorily complete the contract, no alterations of the plans or the nature of the work will involve work beyond the termini of the contemplated construction without modification of the contract and approval by all parties concerned

The Department reserves the right to make, in writing, at any time during the work, such changes in quantities and such alterations in the work as are necessary to satisfactorily complete the project. Such changes in quantities and alterations shall neither invalidate the contract nor release the Surety, and the Contractor agrees to perform the work as altered.

Wherever in the Specifications a supplemental agreement is provided for, such supplemental agreement must be approved by the Commission and spread upon its minutes prior to execution by the Executive Director.

104.02.1--Significant Changes in the Character of Work. Before any consideration will be given for an adjustment to the contract, it must be determined that a significant change in the character of the work has occurred. A Significant change in quantity of a major item, plus or minus twenty-five percent (25%) variation from original quantity, in and of itself, does not constitute a significant change in the character of work. The character of the work, as altered, has to differ materially in kind or nature from that involved or included in the original proposed construction.

If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause

such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable.

If the alterations or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract.

The term "significant change" shall be construed to apply only to the following circumstances:

When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction or

When a major item of work, as defined in Subsection 101.02, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.

Items, quantities, unit prices and amounts, or revisions thereof, established in the contract by supplemental agreement shall be considered as original contract items, quantities, prices, amounts and totals thereof.

When a major item is eliminated, the Contractor will be reimbursed for substantiated unrecovered overhead costs but not to exceed five percent of the original contract value of the item. The Contractor shall not be entitled to nor shall the Commission, the Department, or any of its officers or employees be subjected to any liability or damages.

The Contractor upon request will be paid substantiated actual costs for materials, which are in excess of those used and paid for in the completed work that were mobilized prior to notification of elimination or reduction of a major item. Materials which otherwise would have been required prior to such notification and which are on order that cannot be cancelled may be included in the materials to be paid for by the Department. No payment will be allowed for materials in excess of the quantity required under the contract.

Points of delivery for the reimbursed materials shall be agreeable to the Department. The Contractor shall make delivery at such point and the additional transportation cost, if any, will be reimbursed by the Department.

Mobilization of materials as indicated in this provision shall be understood to be

materials which qualify for partial payment under the provisions of Subsection 109.06, and cannot be reasonably used by the Contractor in other work under contract

At the option of the Department, living or perishable plant materials, seeds, other materials and warehouse items mobilized for the work may be purchased by the Department.

All mobilized materials for which payment is made shall become the property of the Department, and the Contractor shall furnish the Engineer satisfactory title or other approved evidence of ownership.

104.02.2--Differing Site Conditions. During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the contract or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site, the Contractor shall promptly notify the Engineer in writing of the specific differing conditions before the affected work is performed.

Upon written notification by the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment, excluding anticipated profits, will be made and the contract modified in writing accordingly. The Engineer will notify the Contractor of the determination whether or not an adjustment of the contract is warranted.

No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice. The written notice shall be submitted upon the forms provided and required by the Department.

Before beginning or continuing work which justifies an adjustment of the contract unit price or time under the above provisions, a supplemental agreement acceptable to all parties shall be executed. In the event an agreement acceptable to all parties cannot be reached, the Department may order the work to proceed and that part of the work will be paid for in accordance with Subsection 109.04.

If the altered or added work is of a character as to require more than the normal time to complete the work, an adjustment of the contract time may be made.

104.02.3--Minor Alterations to the Contract. When the Department makes alterations in the details of construction or specifications that are minor in nature, the Resident or Project Engineer may elect to make an adjustment to the contract under the provisions of this subsection. Minor alterations shall be defined as

those alterations to the contract that are not addressed in the Standard Specifications, or supplements thereto, and are valued at less than \$10,000.00. The District Engineer shall designate, in writing, the Resident or Project Engineer authorized to execute the Class I Supplemental Agreement. The Resident or Project Engineer and Contractor shall agree upon the scope of work and a lump sum amount, within the above stated limit, for the work to be performed. The agreement shall be reflected in a Class I Supplemental Agreement signed by the Resident or Project Engineer and the Contractor's authorized representative, which, when it bears both the signature of the Resident or Project Engineer and Contractor, shall constitute the scope of work and the sole and only basis for payment by the Department or Commission under the item "Minor Alterations to the Contract." Work shall not proceed until both parties sign the agreement.

Any adjustment of contract time due to Minor Alterations will be in accordance with Subsection 108.06 of the Standard Specifications.

Payment will be made under:

104-A S/A: Minor Alterations to the Contract

- lump sum

This pay item will not to be included on the plans or in the original contract proposal.

104.03--Extra Work. The Contractor shall perform unforeseen work, for which there is no price included in the contract, whenever it is deemed necessary or desirable by the Engineer in order to complete fully the work as contemplated. Such work shall be performed in accordance with the applicable specifications and as directed. Payment or adjustment in payment will be made as provided under Subsection 109.04.

104.04--Maintenance of Traffic. Unless otherwise provided, the road under construction and all other roads and entrances to adjacent property within the right-of-way will be kept open to through and local traffic.

The Contractor shall keep the portion of the project being used by public traffic in satisfactory condition for traffic to be adequately accommodated. The Contractor shall also provide and maintain in a safe condition temporary approaches or crossings and intersections with trails, roads, streets, businesses, parking lots, residences, garages, and farms. Employees of the Department and the Federal agency involved shall have access to all portions of the project at all times.

On any facility which traffic is maintained, mowing shall be performed as necessary as determined by the Engineer to provide reasonable appearance and safety to the traveling public. Mowing shall be performed at the direction and

satisfaction of the Engineer, and shall include those areas from the edge of the pavement to a minimum of five feet beyond the shoulder line. The cost of mowing shall be absorbed in other contract items when the contract does not contain a bid item for mowing, and shall not be the basis for any additional payment.

In case it is necessary or desirable to close a portion of the project to traffic, the plans, special provisions, or other contract documents will so indicate, or in case provisions are not made on the plans or in other contract documents, the Engineer may permit in writing temporary closures of small portions of the project as deemed necessary to expedite the work without compromising the convenience and safety of traffic.

The Contractor shall be bound by the provisions of this subsection and other applicable provisions of the contract with regard to the safe and convenient passage of traffic.

In the case of a project for improvements or construction alongside an existing roadway on which traffic is required to be maintained, no equipment, vehicles or materials will be permitted to park or be stored within the clear/safety zone of the roadway unless it is behind a lane or shoulder closure. Unless working under an approved night time operation, the Contractor shall not perform any work within the clear/safety zone of the roadway between sunset and sunrise.

The Contractor shall not obstruct any traffic facility or connection thereto which is officially opened to public or private traffic or required under the contract to be maintained except as permitted in writing by the Engineer on the basis that other suitable provisions have been made.

Due to accident possibilities for certain days of peak traffic use, the right is hereby reserved for the District Engineer to suspend upon due notice to the Contractor any operation which, if allowed to be carried on, would seriously jeopardize the safety of the traveling public on holidays, the preceding day, and the following day or on days of major public events in the general area. The notice will specifically state the dates of the suspension. When work is suspended as provided herein, the affected phase(s) will be considered as zero for assessment of contract time. Additional compensation will not be paid because of such suspension.

The Contractor will not be directly compensated for constructing, maintaining and removing temporary traffic maintenance facilities unless:

- (a) the proposal contains pay items specifically covering such work, or
- (b) the plans or other contract documents specifically indicate that quantities involved are to be measured for payment.

The Contractor will be paid for work required to restore and/or maintain traffic which is caused by snow, ice, major flooding, landslide or phenomenon of nature such as an earthquake, hurricane, tornado, etc. when damage from such cause is beyond the control of and without the fault or negligence of the Contractor.

If the Engineer orders special maintenance of traffic over and above the requirements specified in the contract for the benefit of the traveling public, the ordered work shall be accomplished as provided in Subsection 104.03 -- Extra Work.

Unsatisfactory maintenance of traffic shall be subject to the procedures provided in Subsection 105.15.

104.05--Removal and Disposal of All Materials From the Project. The Contractor shall remove and dispose of all existing structures and obstructions in accordance with the provisions of Section 202. In the event separate pay items are not provided, the cost of removal and disposal shall be included in prices bid for items under Sections 201 and 203.

The Contractor shall not remove or disturb any buildings, public utilities or other improvements that are to be removed and/or replaced by the Department or owners under separate agreement.

It is anticipated that obstructions to be removed by the Department or owners will be removed and disposed of in advance of construction operations, but in the event there are improvements or other properties retained by the property owner, the Contractor shall not interfere with this property until notified in writing by the Engineer that the rights of the property owner have expired.

Delays in the work occasioned by removal or non-removal by the owner will be considered as attributable to the State under the provisions of the contract for the determination and extension of contract time, but any such delays shall not entitle the Contractor to nor shall such delays justify or be the basis for any monetary damages against the Commission, Department or any of its officers or employees.

Upon notification by the Engineer that the property owner's rights have expired, the Contractor shall proceed to remove and dispose of structures and obstructions in accordance with this subsection and other applicable provisions of the contract.

All existing structures and obstructions or residual portions of structures and obstructions not designated to remain are to be removed by the Contractor.

Improvements designated for removal are for the Contractor's information only, and the lack of such designation shall not relieve the Contractor of the removal

obligation.

When the contract documents indicate certain materials or other matter for removal or removal from the right-of-way permitted and disposed of at locations provided by the Contractor, the Contractor shall furnish the Engineer a copy of a release from each property owner for the servitude of the land. The Contractor shall also furnish the Engineer a certified letter stating that the area of disposal is not in a wetland. The State, the Commission, the Department, or any of its officers or employees will have no ownership or liability whatsoever for materials or matter removed thus from the right-of-way.

All removals by the Contractors are to be made in accordance with the provisions of Section 201, Section 202 and Section 203.

104.06--Use of Materials Found in the Work. It is understood that the title to all materials found within the right-of-way or easements remains with the State. However, the Engineer may permit the Contractor to use stone, gravel, sand and other suitable materials found within the grading limits that may be useful in fulfillment of the contract requirements. The Contractor will be paid both for the excavation of the material at the contract unit price for excavation and for the pay item for which the excavation material is acceptably used. The excavation material, so removed and needed for use in embankments, backfills, approaches, or otherwise in the work, shall be replaced by the Contractor with other material acceptable to the Engineer all at no additional cost to the State. No charge for the material so used will be made against the Contractor. The Contractor shall not excavate or remove any material from within the highway location which is not within the grading limits established by slope stakes without prior written authorization from the Engineer. The Contractor will not be paid for excavation outside the grading limits or below original ground in fill sections.

Unless otherwise provided, material removed from existing structures may be used temporarily by the Contractor. Material designated to be salvaged shall not be cut or otherwise damaged.

104.07--Final Cleaning Up. Before acceptance and final payment will be made, all areas within the right-of-way shall be cleaned of all rubbish, temporary buildings and structures, equipment and excess materials. Salvaged or excess materials expressly reserved by the Engineer for use by the State shall be neatly stockpiled at locations designated. All property occupied or affected by the Contractor and all parts of the work shall be left in a neat and manner acceptable to the Engineer with all waterways unobstructed.

Prior to final inspection for release of maintenance, all areas of the work which have developed an undesirable growth of vegetation shall be given a final mowing, and all undesirable bushes, high grasses and weeds shall be cut and disposed of as directed. The cost of mowing shall be absorbed in other contract

items when the contract does not contain a bid item for mowing and shall not be the basis for any additional payment.

104.08--Value Engineering Incentive. Value Engineering Incentive applies to any cost reduction proposal initiated and developed by the Contractor for the purpose of refining the contract documents so as to contribute to design cost effectiveness or significantly improve the quality of the final product. This subsection does not apply unless a proposal is identified by the Contractor at the time of submission as a Value Engineering Incentive Proposal. The Department shall be the sole judge of the acceptability of any such proposal and of the estimated net savings in construction costs from adoption of all or any part of such proposal.

Cost reduction proposals approved by the Department are to be implemented by a supplemental agreement to the contract and must result in savings without impairing any essential functions and characteristics such as safety, service life, reliability, economy of operations, ease of maintenance, aesthetics and necessary standard design features. Proposed changes in the basic design requirements of a bridge or of a pavement system will not normally be given consideration as a Value Engineering Incentive Proposal. The mere substitution of one contract bid item for another bid item or substitution of any other item for which the Department has previously established a pay item will not be allowed as value engineering nor will a submittal based on the use of material from the right-of-way.

As a minimum, the following information shall be submitted by the Contractor with each proposal:

- (a) A statement that the proposal is submitted as a Value Engineering Incentive Proposal.
- (b) Description of the proposal.
- (c) Discuss contract requirements which will require modification and present a recommendation for each change.
- (d) An estimate of cost reductions.
- (e) Prediction of any effects on other costs to the Department.
- (f) State when the supplemental agreement must be executed to obtain maximum cost reduction during the remainder of the contract and the reasons thereof.
- (g) A statement as to any effect on the project completion date.

The Commission, the Department or any of its officers or employees will not be liable for any delay in acting upon a proposal. The decision of the Engineer as to acceptance of any such proposal will be final and not be subject to Subsection 105.17. The Department may accept the proposal, in whole or in part, by executing a supplemental agreement which will specifically state that it is executed pursuant to these provisions. Such agreement will incorporate the changes or additions to the plans and specifications which are necessary to permit the proposal or accepted part thereof to be put into effect. If conditional, it will include conditions upon which the Department's approval is based. The agreement will also set forth the estimated net savings attributable to the proposal and will further provide that the Contractor be paid 50 percent of said savings. The cost to the Department in evaluating the proposal will be considered in determining the estimated net savings. The Contractor's share of the savings shall constitute full compensation for the Value Engineering Incentive Proposal.

Approval of the proposal and performance of the work thereof shall not change the contract completion date unless specifically provided for in the supplemental agreement implementing the proposal.

The Contractor may request that the Department not use or disclose the information submitted with a proposal and such request may be honored for the extent allowed by law. Such restriction must be in writing and submitted with the proposal. If the proposal is accepted, this restriction shall be void and the Department may use, duplicate or disclose any data necessary to utilize such proposal. The executed supplemental agreement implementing the proposal will become public information in the files of the Department.

This incentive provision applies only to contracts awarded pursuant to competitive bidding.

SECTION 105 - CONTROL OF WORK

105.01--Authority of the Engineer. The Engineer will decide all questions which may arise as to the quality and acceptability of materials, the work and the progress of the work; all questions which may arise as to the interpretation of the plans and specifications; and all questions as to the fulfillment of the contract.

The Engineer will have the authority to suspend the work wholly or in part and to withhold payments because of the Contractor's failure to correct conditions unsafe for workmen or the general public, for failure to carry out provisions of the contract, or for failure to carry out orders. The Engineer may also suspend work for periods deemed necessary due to unsuitable weather conditions, for any conditions considered unsuitable for the prosecution of the work, or for any other condition or reason deemed to be in the public interest.

The Engineer may authorize, in writing, the continued prosecution of items past

their specified seasonal limits when it is determined that the quality of the work will not be reduced and the public interest will be best served.

The Engineer will have authority to enforce and make effective all decisions and orders relating to the contract.

105.02--Plans and Working Drawings. After the contract is executed by the Executive Director, the Contractor will receive free of charge two bound copies of the proposal and contract documents, one executed and one blank, two full scale copies of the plans and five half-scale copies. The Contractor shall have one copy of the proposal and contract documents and one half-scale copy of the plans available at all times during work activity on the project.

Plans will generally show details of the work to be performed and a summary of the items appearing in the proposal.

The plans will be supplemented by working drawings as necessary to adequately control the work. Working drawings shall be furnished by the Contractor as required for the completion of the work. Except where otherwise specified, working drawings shall be approved by the Engineer but such approval will not relieve the Contractor of any responsibility. Working drawings shall not be considered as plan changes and any conflicts on working drawings, whether approved or not, shall not supercede the requirements of the original plans and specifications.

If required, the Contractor shall furnish the original tracings of working plans or drawings to the Engineer.

The contract price bid shall include the cost of furnishing all working drawings. However, when design details of the plans are changed after the Contractor has submitted the required working drawings, the Engineer may order the Contractor to furnish revised or new working drawings as Extra Work.

105.03--Conformity with Plans and Specifications. All work performed and all materials furnished shall be in reasonably close conformity with the lines, grades, cross-sections, dimensions, material requirements and other construction requirements shown on the plans or required by the specifications.

Plan dimensions and contract specification values are target values to be strived for and from which tolerances are allowed. It is the intent of the specifications that the materials and workmanship shall be uniform in character and shall conform as realistically as possible to the prescribed target value or to the middle portion of the tolerance range. The purpose of the tolerance range is to accommodate occasional minor variations from the median zone that are unavoidable for practical reasons. When maximum and/or minimum values are specified, the production and processing of the material and the performance of

the work shall be so controlled that the material and work will not be predominately of borderline quality or dimension. Predominantly borderline quality of materials or work on a continuing basis will be just cause for temporary suspension of work.

In the event the Engineer finds the materials or the finished product in which the materials are used not within reasonably close conformity with the plans and specifications but that reasonably acceptable work has been produced, the Engineer will make a determination as to whether the work will be accepted and remain in place. The Engineer will then make an appropriate adjustment in the contract price for the work or materials as provided in the contract. If no provision for adjustment in price is included in the contract, the Engineer will document the basis of acceptance by contract modification and also may provide for an adjustment in contract price. The documentation will be based on Department SOP for adjustment in contract price or will be based on engineering judgment if a standard criteria for the items involved has not been issued.

When the materials, the finished product or the work are not in reasonably close conformity with the plans and specifications and have resulted in an inferior, unsatisfactory or unacceptable product, the work or materials shall be removed and replaced or otherwise corrected by the Contractor at no additional cost to the State in a manner satisfactory to the Engineer.

When work is of a temporary nature and its use is expected to be of short duration, the Engineer may allow minor deviations, not more than five percent (5%), from specified test values. Any such allowance will not relieve the Contractor from responsibility for maintenance of the work.

105.04--Coordination of Plans, Specifications, Interim Specifications, Special Provisions and Notice to Bidders. These specifications, interim specifications, plans, special provisions, notices to bidders and all other supplemental documents are essential parts of the contract, and a requirement occurring in one contract document is as binding as though occurring in all. They are intended to be complementary and provide for a complete work. In case of discrepancy, calculated dimensions will govern over scaled dimensions. The word "day" throughout the contract shall mean calendar days unless expressed otherwise. Parts of the contract will prevail in the following order:

- (a) Notices to Bidders
- (b) Supplements to Special Provisions and Supplements to Interim Specifications
- (c) Special Provisions
- (d) Interim Specifications
- (e) Plans
- (f) Standard Specifications and Supplemental Specifications

Any reference in the plans or contract documents to a particular Section or Subsection shall mean that Section or Subsection of the Mississippi Standard Specifications for Road and Bridge Construction , or that Section or Subsection as modified by the contract.

In case of conflict between a plan quantity and the advertisement and/or proposal, the plan quantity shall prevail unless otherwise noted in the contract documents.

The Contractor shall not take advantage of any apparent error or omission in the plans or specifications. When the Contractor discovers an error or omission, the Engineer shall be immediately notify. The Engineer will then make corrections and interpretations deemed necessary for fulfilling the intent of the contract.

105.05--Cooperation by Contractor. The Contractor shall give the work the attention necessary to expedite its progress, and shall cooperate with the Engineer, inspectors and other contractors in every possible way.

The Contractor shall have a competent and experienced full time resident superintendent who is capable of reading and understanding the plans and specifications for the particular work being performed. The superintendent shall receive instructions from the Engineer or authorized representative. Upon issuance of the Notice to Proceed, the Contractor or duly appointed agent authorized to bind the Contractor shall file with the Executive Director the name and address of the superintendent who will supervise the work with copies to the Construction Engineer, Contract Administration Engineer, District Engineer and Project Engineer. The Executive Director shall be immediately notified in writing with copies to those stated when a change is made in the Contractor's superintendent or superintendent's address. The superintendent shall have full authority to execute orders or directives of the Engineer without delay and to promptly supply materials, equipment, labor and incidentals as may be required. Such superintendence shall be furnished irrespective of the amount of work sublet

The superintendent shall advise the Project Engineer of an intended absence from the work and designate a person to be in charge of the work during such absence.

The Contractor shall also designate a responsible person whose primary duty shall be to monitor and maintain the effectiveness of the erosion control plan, including NPDES permit requirements. The Engineer shall be furnished with the telephone numbers where the Contractor's responsible person and a substitute, authorized to act in the absence of the responsible person, may be reached at all times when not on the project. This in no way modifies the requirements regarding the assignment and availability of the superintendent.

105.06--Cooperation with Utilities. The Department will notify all utility

companies, all pipe line owners and other known affected parties and endeavor to have plans and agreements for all necessary adjustments within or adjacent to the limits of construction before bids are received. Such utility plans and agreements will be made available for inspection by the Contractor in the Jackson Office. The Department will also endeavor to have all necessary adjustments made as soon as practicable.

All utility appurtenances are to be relocated or adjusted by others unless provided otherwise in the contract.

All known utilities within the project are shown on the plans. It is understood and agreed that the Contractor's bid has considered all of the utility appurtenances in their present or relocated positions and that no additional compensation will be allowed for delays, inconvenience, or damage sustained by the Contractor due to interference from the said utility appurtenances or the operation of moving them. The Engineer's determination that removing, relocating, or adjusting of utility appurtenances or failure of others to do so is causing a delay in major phases of construction which normally should be in progress will be considered a delay by the State in the determination of extension of contract time, but any such delay shall not be the basis for any liability or monetary damage against the Commission, the Department or any of its officers or employees. In the event the utility owners fail to comply with their responsibility in relocating or adjusting their facilities, the Engineer may require the Contractor to make adjustments as Extra Work.

105.07--Cooperation Between Contractors. The Department reserves the right to award contracts for work on or near work covered by other contracts. Each Contractor will be expected to cooperate with the other Contractor(s) and the Department in every reasonable manner.

The Department will make a determination as to the practicality of prosecuting an existing contract before an additional award is made for work in the same area. Insofar as is practicable, the Department will give notice of the intent to award subsequent contracts in the same area. Failure to do so, however, shall not prejudice the rights of the Commission to award additional contracts and shall not constitute grounds for claims against the State, the Commission, the Department or any of its officers or employees.

When separate contracts are let for work, any part or all of which is within the same limits, each Contractor's work shall be conducted so as to cause the least interference with work being performed by the other Contractor(s).

When contracts are awarded to separate Contractors for concurrent construction within a common area, the Contractors, in conference with the Engineer, shall establish a written joint schedule of operations. Such schedule will set out approximate dates and sequences for work to be performed with due regard to

needs and contract time limitations of each contract. The Engineer may allow modification of the schedule when mutual benefit to the Contractors and the Department will result. Any modification of the joint schedule shall be in writing, mutually agreeable, and signed by the Contractors.

Failure of either Contractor to abide by the terms of the joint schedule or modified schedule will be justification for termination of the contract under the provision of Subsection 108.08.

Each Contractor's work shall be arranged such that the placement and disposal of the materials and equipment being used shall not interfere with the operations of the other Contractor. Each Contractor shall join their work with that of others in an acceptable manner and perform it in the sequence of the established schedule.

Each Contractor involved shall assume all liability, financial and otherwise, in connection with the contract and shall protect and save harmless the Commission, Department or any of its officers or employees from all damages or claims that may arise because of inconvenience, delay or loss experienced because of the presence and operations of the other Contractor(s) working within the same contract limits.

When the plans and/or proposal indicate a railroad crossing the project at grade, the Department intends to construct or have constructed by others an at-grade railroad crossing. This work may also include adjustment or installation of allied traffic safety features.

If the railroad work is to be performed under separate contract let by the Department, all the provisions of this subsection are applicable. When the work is to be performed by the railroad or its contractor, all the provisions of this subsection are applicable except a schedule of operations will not be required.

105.08--Construction Stakes, Lines and Grades. Except when the contract contains a pay item for "Roadway Construction Stakes," the Engineer will set construction stakes establishing lines, slopes, and profile grades in road work and only centerline and bench marks for bridge work. Box bridges shall not be considered as a bridge. The Engineer also will furnish the Contractor with all necessary information relating to lines, slopes, and grades. These stakes and bench marks shall constitute the field control by which the Contractor shall establish and maintain all necessary controls and perform the work.

The Department will assume responsibility for the accuracy of the stakes and bench marks at the time they are set by the Engineer or the Engineer's representative. Any corrective work caused by inaccurate field controls established by the Department will be considered as Extra Work and paid for under appropriate provisions of the Contract.

The Contractor shall be held responsible for the preservation of all stakes and bench marks, and when carelessly or willfully destroyed or disturbed, the cost of replacing them will be charged against the Contractor.

When the contract contains a pay item for construction stakes, Section 699 shall apply.

105.09--Authority and Duties of the Resident or Project Engineer. As the direct representative of the Chief Engineer, the assigned Resident or Project Engineer has immediate charge of the engineering details of the contract. The Resident or Project Engineer is responsible for the administration and satisfactory completion of the work in accordance with the contract, and the authority is delegated commensurate with these responsibilities.

105.10--Duties of the Inspector. Inspectors employed by the Department will be authorized to inspect all work and materials. The inspection may extend to all parts of the work and to the preparation, fabrication or manufacture of the materials. The inspector will not be authorized to alter or waive the provisions of the contract, to issue instructions contrary to the plans and specifications or to act as foreman for the Contractor.

105.11--Inspection of Work. All materials and each part or detail of the work are subject to inspection by the Engineer. The Engineer shall be allowed access to all of the work and shall be furnished with such information and assistance by the Contractor as necessary to make a complete and detailed inspection.

Prior to acceptance of the work, the Contractor shall remove or uncover such portions of the work as directed by the Engineer. After examination, the Contractor shall restore said portions of the work. If the work exposed or examined was acceptable, the uncovering or removing and the restoring of the work will be paid as Extra Work. If the work so exposed or examined was unacceptable, the uncovering or removing and the restoring of the work will be at no additional cost to the State or the Commission.

Work performed or materials used by the Contractor without supervision or inspection by an authorized Department representative may be ordered removed and replaced. In the event it is determined by the Executive Director that non-supervision or non-inspection by the Department was due to the failure of the Engineer to have a representative present after having been given reasonable notice in writing that the work was to be performed, the work may be examined, removed or replaced as ordered and will be paid as Extra Work if the work so exposed or examined was acceptable. Otherwise, such unauthorized work shall be removed and replaced at no additional cost to the State or the Commission. When any unit of government, political subdivision, railroad corporation or other public service is to pay a portion of the cost of the work its respective

representative shall have the right to inspect the work. Such inspection shall in

no way make said agency or corporation a party to this contract and shall in no way interfere with the rights of either party of the contract.

105.12--Removal of Unacceptable and Unauthorized Work. Unless otherwise determined acceptable under the provisions of Subsection 105.03, all work which does not conform to the requirements of the contract will be considered as unacceptable work.

Unacceptable work, whether the result of poor workmanship, defective materials, damage through carelessness or any other cause, found prior to final acceptance of the work shall be removed and replaced in an acceptable manner, without any additional cost to the Commission.

Work done contrary to the instructions of the Engineer, or beyond the lines shown on the plans or extra work without authority will not be paid for under the provisions of the contract.

105.13--Load and Speed Restrictions. The Contractor shall determine and comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the project. The Department shall not have any obligations to determine or inform the Contractor of any legal load limitations of any municipality, county or the State of Mississippi. A special permit will not relieve the Contractor of liability for damages which may result from the moving of material or equipment.

Within the project limits, the operation of equipment of such weight or so loaded as to cause damage to the roadway, structures or other work is forbidden. The Contractor shall regulate loads such that damage will not occur to structures or any completed subgrade or pavement structure, but in no case shall loads exceed the legal load limit. Loads will not be permitted on a portland cement concrete pavement, base or structure before the expiration of the curing period. The Contractor shall be responsible for all damages caused by hauling equipment .

The Contractor shall provide approved platform scales or a sufficient number of approved portable scales together with essentials for calibrating and all labor, tools, and equipment necessary to weigh as many loaded vehicles as will assure the Engineer of the Contractor's compliance with weight restrictions.

The Contractor shall be responsible for the safe speed of vehicles assigned to the project. Speeds less than those provided by law may be ordered in writing by the Engineer when in the opinion of the Engineer such action is essential to public safety or to the quality of work.

105.14--Maintenance During Construction. The Contractor shall maintain the work until released from maintenance. This maintenance shall constitute continuous and effective work prosecuted day by day with adequate equipment,

forces and material to the end that the roadway structures and all other features of the work are kept in satisfactory condition at all times. Traffic shall be continuously, safely and conveniently maintained as required under the contract.

In the case of a contract for the placing of a course upon a course or subgrade previously constructed, the Contractor shall maintain the previous course or subgrade during all construction operations.

All cost for maintenance of the work shall be included in the unit prices bid on the various pay items, and the Contractor will not be paid any additional amount for such work except as otherwise provided in the contract.

105.15--Failure to Maintain Roadway or Structures. If the Contractor, at any time, fails to comply with the provisions of Subsection 105.14, the Engineer will immediately notify the Contractor of such non-compliance. When the deficiency creates a traffic hazard, the Contractor shall immediately use all available means to correct or otherwise remove the hazard. The Contractor's failure to remedy unsatisfactory maintenance within 24 hours after receipt of such notice will be just cause for the Engineer to maintain the project with such forces as the Engineer deems necessary. Any and all cost to the State or Commission will be deducted from monies due or to become due the Contractor.

105.16--Acceptance.

105.16.1--Partial Acceptance. When the Contractor has completed a unit of the work such as an interchange, a structure, a portion of the road or pavement or one project of a multi-project contract, the Contractor may request the Engineer to make a final inspection of that unit; or the Executive Director may order a final inspection of the unit if it is in the public's interest. If the Engineer finds upon inspection that the unit has been completed in compliance with the contract and it is a complete facility which can be made available to the public or made available for the prosecution of work under another contract, the Executive Director may conditionally accept the unit and conditionally relieve the Contractor of certain contractual responsibilities as defined in the release.

In the event items of work covered by such release are found to be defective or deficient as evidenced by unsatisfactory test reports of materials incorporated in the work or other engineering determination, the release shall terminate upon written notification to the Contractor. The Contractor shall make all corrections, restorations, constructions or reconstructions deemed necessary and shall resume all contractual responsibilities until all corrective measures have been made in accordance with the terms of the contract.

Partial acceptance does not constitute final acceptance of the work, or any part thereof, nor in any way void or alter any of the terms of the contract.

Relief from "certain contractual responsibilities" as indicated herein may, or may not, include:

- (a) Further maintenance of the defined limits of the partially accepted work.
- (b) Further public liability for the defined limits of the partially accepted work.
- (c) Further liability for liquidated damages as applicable to the value of the partially accepted work when the quantities for the partially accepted work are separate quantities listed on the Summary of Quantities sheet of the plans, and the separate quantities and the total amounts thereof are listed on the Engineer's Estimate. Otherwise, no reduction in liquidated damages will be made because of such partial acceptance.

Unless specifically provided in the contract, the liability for liquidated damages shall not be reduced to less than that applicable under the contract for an amount of such work equal to at least fifty percent (50%) of the total amount of work under the contract.

105.16.2--Final Acceptance. Upon written notice from the Contractor of presumptive completion of all the work and upon due notice from the Resident or Project Engineer, the Engineer will make an inspection. If all work provided by the contract has been completed to the Engineer's satisfaction, that inspection will constitute the final inspection, and the Engineer will conditionally release the Contractor of maintenance and notify the Executive Director of completion. Upon evidence that the Contractor has fulfilled all obligations under the contract, the Executive Director will make final acceptance and notify the Contractor in writing. On applicable Federal Aid projects, form FHWA-47 must be completed and submitted to the Project Engineer within 45 days of the final inspection.

If the inspection discloses any work as being unsatisfactory or incomplete, the Engineer will discuss in detail with the Contractor all discrepancies in the work. Upon correction of the work, another inspection will be made which shall constitute the final inspection provided the work has been satisfactorily completed and the Engineer will notify the Executive Director as to said completion. Upon evidence that the Contractor has fulfilled all obligations under the contract, the Executive Director will make final acceptance and notify the Contractor in writing.

However, if during the final inspection the Engineer determines that all work has been satisfactorily completed save that of growth and coverage of plant establishment on all or part of the work, the Engineer may recommend acceptance of all work except items related to growth and coverage. Upon such recommendation the Contractor may be released of maintenance and further contractual liabilities for the completed work. The Contractor will retain responsibility for plant establishment and all maintenance and repairs appurtenant thereto until satisfactory growth and coverage is achieved.

105.17--Claims for Adjustments and Disputes. It is in the public interest that the Department have early or prior knowledge of an existing or impending claim of any nature by the Contractor so that the Department may appropriately consider modifying the details of the work or other actions of the Department which might result in mitigation or elimination of the effect of the act or conditions objected to by the Contractor and so that the Department may institute appropriate procedures, as required, to keep strict account of actual costs and to verify, at the time, facts upon which a claim is made. Therefore, if in any case the Contractor deems that additional compensation is due for work or materials not covered in the contract or not ordered by the Engineer as Extra Work, or if the Contractor deems that adjustment in the contract time should be made because of any of the reasons provided for in the contract as a basis for an extension of time, the Contractor shall immediately notify the Engineer in writing of an intention to make such claim for additional compensation before beginning the work on which the Contractor bases the claim. If the nature of the claim is such that the Contractor can not fully identify all aspects of the claim, the Contractor shall have 30 calendar days from the date of the incident to provide the Engineer with written documentation clearly identifying the claim issue(s) and all other logically related work items or phases. If such written notification is not given by the Contractor in accordance with these specifications and the Engineer and the Department's Audit Division, or other authorized persons, are not afforded proper facilities by the Contractor for keeping strict account of actual costs or verification at the time of facts upon which a claim for contract adjustment is made, the Contractor hereby agrees that failure to provide written notice has denied the Department the prerogative of verifying additional time, materials, equipment, labor and making adjustments in the work which might remove or alleviate the conditions for which a claim might be made, and the Contractor further agrees that such failure on the Contractor's part shall be a conclusive waiver of any claim, or part thereof, including the waiver of any such claim for damages before a court of law.

Mere oral notice or statement will not be sufficient, nor will an unnecessarily delayed notice or statement after the event.

Any such notice shall be in writing on a form provided by the Department for such purpose and shall describe in detail any act of omission or commission by the Department or its agents that allegedly caused or contributed to the condition for which a claim may be made and the nature of the claim and shall provide all documentation to support any such claim. The Contractor shall deliver or mail the notice to the Project Engineer and retain proof of such delivery.

Upon receipt of the notice, the Project Engineer will acknowledge receipt in writing to the Contractor with a copy of the notice and acknowledgment to the District Engineer, State Construction Engineer and the Department's Audit Director.

The Project Engineer will evaluate the Contractor's claim and forward recommendations to the District Engineer with a copy to the State Construction Engineer and the Department's Audit Director.

The State Construction Engineer, after consultation with the District Engineer and Project Engineer, will notify the Audit Division of the Contractor's claim and request that the Audit Director, and/or other appropriate individual, take the necessary steps to review the legitimacy of the Contractor's documentation of the claim.

Audit Division determines that the Contractor's documentation relative to the time, materials, equipment and labor may be legitimate, that division or other appropriate individual will continue to monitor the Contractor's charges until the Contractor's services are complete.

The Contractor agrees that such notice by the Contractor and that the Engineer has kept account of the costs and the Audit Division or other authorized individual has considered the legitimacy of the Contractor's documentation and other facts as aforesaid shall not in any way be construed as substantiating the validity of a claim.

In presenting a claim, the Contractor shall clearly and specifically state:

- (a) The contract subsection number(s) under which each part of the claim is made.
- (b) The event(s) or conditions covered in each such subsections and made the basis for each part of the claim.
- (c) A claim for additional compensation shall include supporting auditable cost figures from entries made in the original records entered at the time of the work. The Contractor agrees to and will be required to provide all records that the Department's Audit Director or other appropriate individual deems necessary for the performance of an audit in accordance with the United States General Accounting Office's Governmental Auditing Standards, the Institute of Internal Auditor's Professional Practice Standards, and the American Institute of Certified Public Accountant's Auditing Standards.

All claims made shall be sent to the Resident or Project Engineer for review and appropriate action.

The Contractor agrees that if a claim is so vague that the Engineer cannot reasonably and expeditiously determine the specific contractual provisions relied on by the Contractor as the basis of each part of the claim, or if the Audit Director or other appropriate individual cannot reasonably and expeditiously determine that the costs related to the claim are related specifically to the referenced project or are not related to any other project(s) that the Contractor is

constructing or has constructed, it will be denied by the Engineer or returned without action.

Any part of a claim based on after-the-fact general statements of costs such as "Normal cost of such work", "computed as a percentage of etc." or other such indefinite statements shall not justify or be the basis for the payment of or award of any damages and will be denied or returned to the Contractor without action.

The Resident or Project Engineer may request supplemental data in writing, or return the claim to the Contractor for resubmission in accordance with these specifications.

A claim, as approved by the Department, will be paid in accordance with the provisions of Subsections 104.02 and 104.03 and adjustments in contract time will be made in accordance with the provision of Subsection 108.06. When a claim is denied or returned without action, the notice will state the reasons thereof

105.18--Automatically Controlled Equipment. Unless otherwise prohibited in other sections of the specifications or other contract documents, automatically controlled equipment that malfunctions may be operated manually or by other approved methods for a period of time approved by the Engineer so as to prevent loss or damage to the work already produced, manufactured, or processed at the time of the breakdown or malfunction. The resulting work must meet the requirements of the contract.

SECTION 106 - CONTROL OF MATERIALS

106.01--Source of Supply and Quality Requirements.

106.01.1--General. The materials used in the work shall meet all quality requirements of the contract. At the option of the Engineer, materials may be approved at the source of supply provided the Contractor notifies the Engineer of the proposed source of material well in advance of the time of proposed delivery. If previously approved materials do not produce uniform and satisfactory products, the Contractor shall furnish materials from other sources.

106.01.2--Warranties, Guaranties, Instruction Sheets and Parts Lists. For manufactured articles, units, components or materials incorporated in any mechanical or electrical facility required under the contract, the manufacturer's warranties, guaranties, instruction sheets and parts lists shall be delivered before final acceptance of the work.

106.02--Local Materials Sources.

106.02.1--Designated Sources. Possible sources of local material may be designated on the plans or described in the special provisions. The quality of material in such deposits will be acceptable in general, but the Contractor shall determine for himself the equipment and work required to produce uniform, acceptable material. It shall be understood that it is not feasible to ascertain from samples the specific limits of acceptable material from the entire deposit and variations shall be considered as usual and are to be expected. The Engineer may order procurement of material from any portion of the deposit and may reject other portions of the deposit as unacceptable.

Unless designated sources are identified in the contract as State Furnished or State Optioned, acquisition and rights of ingress and egress shall be the responsibility of the Contractor.

106.02.2--Contractor Furnished Sources. The Contractor shall provide sources of materials meeting the requirements of the contract and shall bear all costs involved, including the cost to the Department for sampling and testing for source approval.

The Department's costs will be based on the standard sampling and testing charges published in Department SOP, and the charges will be deducted from monies due the Contractor.

The Department will assume the cost of acceptance sampling and testing during production and use of the materials.

All pits and quarry sites are subject to approval from the Mississippi Department of Environmental Quality, Office of Geology, as set forth in Subsection 107.23.

106.02.3--All Sources. All pit operations including hauling shall comply with the applicable provisions of Subsection 107.22. Unless otherwise permitted, all pits shall be drained upon completion.

106.03--Samples, Tests, and Cited Specifications. All materials used in the work shall conform to the general requirements of Section 700 and the specific requirements for each item of work. Cited specifications of AASHTO, ASTM or Federal Specifications for materials or test methods shall be understood to mean approved pre-published or published "Standards" of ASTM, AASHTO, Federal Specifications; Interim Specifications of AASHTO denoted by the suffix "I", Tentative Specifications of ASTM denoted by the suffix "T", or amended Federal Specifications denoted by a numbered amendment, current on the date of advertisement for bids. Unless otherwise provided, all materials shall be inspected and tested for acceptance in accordance with Subsection 700.03. The work shall be considered incomplete until acceptance of all materials used in the work. Any work performed prior to approval of materials will be the sole responsibility of the Contractor.

The Department reserves the right to retest all materials even though they have been tested and approved earlier and to reject all retested materials that do not meet the requirements of the contract.

Prior inspection, test and approval of material used as a component of another item of work shall in no way imply acceptance if the work in which the material is incorporated fails to meet the requirements of the contract.

Test reports will be furnished to the Contractor upon request.

106.04--Certification of Compliance. Prior to sampling and testing by the Department, the Engineer may permit use of certain materials or assemblies accompanied by acceptable certificates of compliance stating that such materials or assemblies fully comply with the requirements of the contract. Each lot of such materials or assemblies delivered to the work must be accompanied by an approved certificate of compliance in which the lot is clearly identified.

Certificates of Compliance shall be prepared in accordance with Subsection 700.05.

Materials and assemblies used on the basis of Certificates of Compliance and found not to be in conformity with contract requirements are subject to rejection whether in place or not.

Unless otherwise required, the original and three copies of all Certificates of Compliance shall be furnished to the Engineer. Unless specifically provided for elsewhere in the Contract, payment for the work will not be made until proper certification has been received.

106.05--Plant Inspection. The Engineer may make the inspection at the source of material produced by a third party.

In the event such plant inspection is undertaken the following conditions shall be met:

- (a) The Engineer shall have the cooperation and assistance of the Contractor and the producer.
- (b) The Engineer shall have full entry of the plant as may concern the manufacture or production of the materials.
- (c) When specified, the Contractor shall provide an approved laboratory unit conforming to the applicable requirements of Section 621.

106.06--Blank.

106.07--Foreign Materials. Except as specifically prohibited in these specifications or other contract documents, consideration may be given by the Department to the use of certain materials manufactured or produced outside of the United States provided the materials are delivered to approved locations within the State. The Contractor shall, at no additional cost to the State, arrange for any required sampling and testing which the State is not equipped to perform. All testing shall generally be performed within the United States' Mainland and be subject to witnessing by the Engineer. Certain materials or processes may necessitate the testing be performed or witnessed at the foreign source by State personnel. When the Engineer authorizes inspection at a foreign site, the Contractor shall reimburse the State for all expenses incurred outside the United States by the State's representatives.

For materials requiring mill test reports, the State Materials Engineer will determine that in-plant quality controls are adequate to assure delivery of uniform material in accordance with contract requirements, and the State Materials Engineer's determination of the adequacy of in-plant quality controls with respect to mill test reports and certificates of compliance shall be final.

No structural materials will be accepted which cannot be properly identified with mill test reports and certificates of compliance even though in-plant quality control procedures have been established to the satisfaction of the State Materials Engineer.

106.08--Storage of Materials. Materials shall be stored in a manner to assure the preservation of their quality and fitness for the work. Stored materials may be re-inspected and retested prior to their use in the work. The materials shall be located so as to facilitate their prompt inspection. Approved portions of the right-of-way may be used for plant operation and storage of materials and equipment. Private property shall not be used without written permission of the owner or lessee, and duplicate copies of such written permission shall be furnished the Engineer. All sites shall be restored to their original conditions at no additional cost to the State or the Commission. This shall not apply to stripping and storing of materials salvaged from the work for use by the Department on other work.

106.09--Handling Materials. All materials shall be handled in such manner as to preserve their quality and fitness for the work. Materials shall be transported in tight vehicles so constructed as to prevent loss or segregation of materials after loading and measuring for incorporation in the work.

106.10--Unacceptable Materials. All materials not conforming to the requirements of the specifications at the time they are incorporated in the work shall be rejected and removed immediately unless otherwise instructed by the Engineer. Rejected materials which have been corrected shall not be used until written approval has been given by the Engineer.

106.11--Department Furnished Material. Material furnished by the Department will be delivered or made available to the Contractor at the points specified in the contract.

Unless otherwise specified, the cost of handling, placing, and maintaining all materials after they are delivered or made available will be at the Contractor's expense.

The Contractor will be held responsible for all materials delivered or made available and deductions will be made from monies due for shortages or deficiencies, damages which may occur thereafter, and any demurrage charges.

106.12--Substitute Materials. The Contract will typically specify material generally used in highway construction. The Department from time to time will approve substitute materials for specific uses. These materials and their uses will be noted on the Department's "List of Approved Materials". Contractors proposing to use substitute materials will be responsible for determining if the material has gained Department approval. When an approved substitute material is to be used, the Contractor will furnish a certification from the manufacturer that the product is the same material as approved by the Department and that no alterations have been made. Material will be sampled and tested by the Department as necessary for acceptance. Approved lists may be obtained from the State Materials Engineer.

106.13--Convict Produced Materials. Materials produced after July 1, 1991, by convict labor may only be incorporated in a Federal-Aid highway construction project if such materials have been:

- (1) Produced by convicts who are on parole, supervised release, or probation from a prison or
- (2) Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal-aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal-Aid highway construction during the 12month period ending July 1, 1987.

<u>Qualified prison facility</u> means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in Federal-Aid highway construction projects.

SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.01--Laws to Be Observed. The Contractor shall have the authority to and will keep fully informed and comply with all Federal, State and local laws,

ordinances, regulations and all orders and decrees of bodies or tribunals having jurisdiction or authority which affect those engaged or employed on the work or affect the conduct of the work. The Contractor shall protect and indemnify the State and its representatives against all claims or liability arising from or based on the violation of such laws, ordinances, regulations, orders or decrees whether by the Contractor, the Contractor's employees, subcontractors and employees or agents thereof.

107.02--Permits, Licenses, and Taxes. The Contractor shall have the duty to determine any and all permits and licenses required and to procure all permits and licenses, pay all charges, fees and taxes and issue all notices necessary and incidental to the due and lawful prosecution of the work.

The Contractor is advised that the "Mississippi Special Fuel Tax Law", Section 27-55-501, et seq. and it's requirements and penalties apply to any contract for construction, reconstruction, maintenance or repairs, for contracts entered into with the State of Mississippi, any political subdivision of the State of Mississippi, or any Department, Agency, Institute of the State of Mississippi or any political subdivision thereof.

The Mississippi State Tax Commission will be notified of the name and address of Contractors that are awarded MDOT contracts. The Contractor will be subject to an audit during the life of this contract to make certain that all applicable fuel taxes are being paid promptly as outlined in Section 27-55-501, et seq.

107.03--Patented Devices, Materials, and Processes. If the Contractor employs any design, device, material or process covered by letters of patent or copyright, the Contractor shall provide for such use by agreement with the patentee or owner. The Contractor shall not involve the State or the Commission in the payment for royalties, either directly or indirectly. Attention is invited to Section 65-1-61, Mississippi Code of 1972, Annotated, regarding use of patented materials for paving. At any time during the prosecution or after completion of the work, the Contractor and Surety shall indemnify and save harmless the State and/or the Commission, any affected third party or political subdivision from any and all claims for infringement by use of any such patent or copyright.

107.04--Restoration of Surfaces Opened by Permit. The right to construct or reconstruct any utility service in the highway or street or to grant permits for same, at any time, is expressly reserved by the Department. The Contractor will not be entitled to any damages from the Commission or the Department for delays or damages due to utility construction or reconstruction by a third party except an adjustment in contract time will be allowed when the Engineer determines a delay prevents the performance of the controlling phase(s) of work.

Any individual, firm or corporation wishing to make an opening in the highway must secure a permit from the Department. The Contractor shall allow parties

bearing approved permits or agreements, and only those parties, to make openings in the highway. When ordered by the Engineer, the Contractor shall make all necessary repairs and will be paid as provided in these specifications or as Extra Work. The repairs will be subject to the same requirements as the original work.

107.05--Federal Aid Participation. When the United States Government pays all or any portion of the cost of a project, the Federal laws and the rules and regulations made pursuant to such laws shall be observed by the Contractor, and the work shall be subject to the inspection of the Federal agency.

Such inspection shall in no way make the Government a party to this contract nor will it interfere with the rights of either party hereunder.

107.06--Sanitary, Health and Safety Provisions. The Contractor shall provide and maintain adequate sanitation facilities for employee use. The location of such accommodations shall be subject to the prior approval of the Engineer. The Contractor shall also provide adequate dust control on the project, haul roads and at other areas of operation.

Such accommodations shall be designed and operated to conform to local and State health regulations. The Contractor shall not require any worker to work in surroundings or under conditions contrary to local, State, and Federal health and safety regulations. All such requirements and regulations shall be as binding upon the Contractor as actually included in these specifications.

No direct payment will be made for these provisions.

107.07--Public Convenience and Safety. The Contractor shall conduct work in a manner to assure the least possible obstruction to traffic. The safety and convenience of the general public, residents along the highway and protection of persons and property shall be provided as specified under Subsection 104.04.

All work on grade separation structures, such as overpasses or underpasses of existing highways, roads or streets, shall be in a manner to assure the least practicable interference with the public use of the facility. The Contractor shall use reasonable care and precaution to avoid accidents, damage, unnecessary delay or interference with traffic and provide competent flaggers to insure maximum public safety.

107.08--Railway-Highway Provisions. The Department will obtain railroad agreements as required by the contract. The agreements will be available for the bidder's review in the Office of the Bridge Engineer when the railroad is at bridge sites, and the District Office for at-grade railroad crossings.

107.08.1--Authority of Railroad Engineer and Highway Engineer. The

authorized representative of the railroad, hereinafter referred to as the Railroad Engineer, shall have final authority in all matters affecting the safe maintenance of railroad traffic including the adequacy of the foundation and structure supporting the railroad tracks.

The authorized representative of the Department, hereinafter referred to as the Engineer, shall have authority over all other matters.

107.08.2--Notice of Starting Work. The Contractor shall not commence any work on railroad rights-of-way until the following conditions have been met:

- (a) Give the Railroad Company written notice with a copy to the Engineer at least ten days in advance of the proposed date to begin work on railroad rights-of-way.
- (b) Obtain from the Railroad Company, written approval of Liability Insurance as required by Subsection 107.14.2.2.
- (c) Obtain written authorization from the Railroad Company to begin work on railroad rights-of-way. Such authorization may include specific conditions.
- (d) Before commencing work on any pier or structure adjacent to any track, the Contractor shall submit to the Engineer for the approval of the Engineer and Railroad Engineer, seven prints of the proposed sheeting and bracing details and method of installation for protection of the railroad embankment and tracks. These plans shall bear the seal of a registered structural or professional engineer and shall be accompanied by design computations and soil data pertinent to the site, or other acceptable basis used for the design. During construction, the Contractor shall make provisions satisfactory to the Engineer and Railroad Engineer against disturbing, in any manner, the railroad embankment or track(s).

The Railroad Company's written authorization to proceed with the work should include the name, address and telephone number of the railroad's representative to be notified in advance of the work. Where more than one representative is designated, the area of responsibility of each representative should be specified.

107.08.3--Interference with Railroad Operations. The Contractor shall so arrange and conduct the work in such a manner that there will be no interference with railroad operations, including train, signal, telephone and telegraphic services, or damage to the property of the Railroad Company or to poles, wires and other facilities or tenants on the rights-of-way of the Railroad Company. Whenever work is likely to affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad Engineer for approval, but such approval shall not relieve the Contractor from liability. Any work to be

performed by the Contractor which requires protective service (flagging or inspection) shall be deferred by the Contractor until the protective service is available at the job site.

When work within railroad rights-of-way is of such a nature that interference to railroad operations is unavoidable, the Contractor shall schedule and conduct the work so that such interference is held to a minimum.

Should conditions arise from the work that require immediate and unusual provisions be made to protect operations and property of the railroad, the Contractor shall provide such provisions. When these provisions are insufficient in the judgment of the Railroad Engineer or the Engineer in the absence of the Railroad Engineer, the Contractor shall provide such provisions as deemed necessary. Any such unusual provisions shall be without cost to the railroad.

107.08.4--Track Clearances. Unless written authorization to the contrary is obtained from the Railroad Engineer, the minimum track clearances listed below or as shown on the plans, whichever is greater, shall be maintained by the Contractor at all times during construction operations:

Vertical: 21' 6" above the top of highest rail

Horizontal: 14' 0" from centerline of nearest track, measured at right angles

thereto.

However, before undertaking any work within railroad rights-of-way or before placing any obstruction over any track, the Contractor shall:

- (a) Notify the railroad's representative at least 72 hours in advance of the work.
- (b) Receive assurance from the railroad's representative that arrangements have been made for any required flagging service.
- (c) Receive permission from the railroad's representative to proceed with the work.
- (d) Ascertain that the Engineer has received copies of notice to the railroad and the railroad's response.

107.08.5--Construction Procedures.

107.08.5.1--General. Construction work on railroad property shall be subject to the inspection and approval of the railroad representative and in accordance with the railroad's outline of specific conditions and these specifications.

107.08.5.2--Excavation. The subgrade of an operated track shall be maintained with edge of berm at least 10'0" from centerline of track and not more than 24 inches below top of rail. If existing track section is substandard, the Contractor will be required only to maintain the existing section.

107.08.5.3--Excavation for Structures. When excavating and/or driving piling adjacent to tracks, the Contractor shall take special precaution and care to provide adequate lateral support for the tracks and the loads which they carry, without disturbance of track alignment and grade, and to avoid obstructing track clearances with equipment, tools, or materials. The procedure for doing such work, including need of and plans for shoring, shall be approved by the Railroad Engineer, but such approval shall not relieve the Contractor from liability.

107.08.5.4--Blasting. The Contractor shall obtain advance approval of the Railroad Engineer and the Engineer for use of explosives on or adjacent to railroad property. If permission is granted, the Contractor will be required to comply with railroad requirements and the following:

- (a) Blasting shall be done with light charges under the direct supervision of a responsible officer or employee of the Contractor.
- (b) Electric detonating fuses shall not be used because of the possibility of premature explosions resulting from operation of two-way radios.
- (c) No blasting shall be done without the presence of an authorized representative of the railroad. At least 72 hours advance notice to the person designated in the railroad's notice of authorization to proceed will be required to arrange for the presence of an authorized railroad representative and such flagging as the railroad may required.
- (d) The Contractor shall have at the job site adequate equipment, labor and materials and allow sufficient time to clean up debris resulting from the blasting without delay to trains, and correct any track misalignment or other damage to railroad property as directed by the railroad's authorized representative. Cost for delay of trains caused by the Contractor's actions shall be borne by the Contractor.

The railroad representative will determine the approximate location of trains and advise the Contractor of the approximate amount of time available for the blasting and clean-up operation. The representative will have the authority to order discontinuance of blasting if blasting is too hazardous or is not in accord with these specification.

107.08.5.5--Maintenance of Railroad Facilities. The Contractor shall maintain all tracks, railroad beds, ditches and drainage structures free of silt or other obstructions, promptly repair eroded areas within railroad rights-of-way, and be responsible to the railroad for repair to any other damage to the property of the railroad or its tenants which is a direct result of the Contractor's operations.

107.08.5.6--Storage of Materials and Equipment. The Contractor shall not store materials and equipment on the rights-of-way of the Railroad Company without obtaining written permission from the Railroad Engineer. Such permission may be with the understanding that the Railroad Company will not be liable for any damages to materials and equipment from any cause and that the

Railroad Engineer may move or require the Contractor to move such materials and equipment.

All unattended equipment that is left parked near the track shall be effectively immobilized so that it cannot be moved by unauthorized persons. The Contractor shall protect, defend, indemnify and save the railroad and any associated, controlled or affiliated corporation harmless from and against all loss, costs, expenses, claim or liability for loss of or damage to property or the loss of life or personal injury, due to the Contractor's failure to immobilize said equipment.

107.08.5.7--Cleanup. Upon completion of the work the Contractor shall remove from within the limits of the railroad rights-of-way all machinery, equipment, surplus materials, falsework, rubbish or temporary buildings, and leave said rights-of-way in a neat condition satisfactory to the Chief Engineer of the Railroad or authorized representative.

107.08.6--Damages. The Contractor shall assume liability for damages to the work, the Contractor's employees, servants, equipment and materials caused by railroad traffic unless such damages result from negligent operation of the railroad.

Any cost incurred by the railroad for repairing damages to railroad property or to property of railroad tenants caused by or resulting from the Contractor's operations shall be the responsibility of the Contractor.

107.08.7--Flagging Services.

107.08.7.1--When Required. The Railroad Engineer has sole authority to determine the need for flagging. Generally, the requirement of this service will be when Contractor's personnel or equipment are, or are likely to be, working on the railroad's rights-of-way or when the work is likely to disturb a railroad structure, roadbed or grade and alignment of any track to such extent that the movement of trains must be controlled or when booming over track(s) with a crane.

107.08.7.2--Scheduling and Notification. Not later than the time that approval is initially requested to begin work on railroad rights-of-way, the Contractor shall furnish to the railroad and the Department a schedule for all work required to complete the portion of the project within railroad rights-of-way and arrange for a job site meeting between the Contractor, the Department, and the railroad's authorized representative. Work on railroad rights-of-way shall not begin until the job site meeting has been conducted and the Contractor's work scheduled.

The Contractor is to give the railroad representative at least ten days of advance written notice of intent to begin work within railroad rights-of-way in accordance with these specifications. If work is suspended, the Contractor shall give the

railroad representative at least three days of advance notice before resuming work. Such notices shall include sufficient details of the proposed work to enable the railroad representative to determine if flagging will be required. If such notice is in writing, the Contractor shall furnish the Engineer a copy or if notice is given verbally it shall be confirmed in writing with copy to the Engineer. If flagging is required, no work shall be undertaken until the flagger/flaggers is/are present at the job site.

If, after the flagger is assigned to the project site, emergencies arise which require the flagger's presence elsewhere, the Contractor shall delay work on railroad rights-of-way until such time that a flagger is available.

107.08.7.3--Payment. The Department will be responsible for reimbursement to the railroad directly for any and all costs for flagging and inspection services which are required to accomplish the work required by the contract.

107.08.8--Haul Across Railroad. Where the plans show or imply that materials must be hauled across a railroad, the Contractor will be required to make all necessary arrangements with the railroad regarding means of transporting such materials unless the plans clearly show that the Department has included arrangements for such haul in its agreement with the railroad. The Department will reimburse the railroad for cost of flagging, and the Contractor will be required to bear all other costs incidental to such crossings whether services are performed by the Contractor or by railroad personnel.

No crossing may be established for transporting materials or equipment across a railroad unless specific authority for its installation, maintenance, protective services and removal is first obtained from the Railroad Engineer.

107.08.9--Railroad Services for Benefit of the Contractor. Railroad services (including flagging and inspection) needed for any work which is for benefit of the Contractor or due to work which is the fault of the Contractor shall be at the Contractor's expense. The Contractor shall make specific arrangements for such work including basis of payment with the railroad. Prior to final acceptance, the Contractor shall furnish to the Department satisfactory evidence that the railroad has acknowledged receipt of payment for any such services.

107.08.10--Cooperation and Delays. It shall be the Contractor's responsibility to arrange a schedule with the railroad for accomplishing stage construction involving work by the railroad or tenants of the railroad. In arranging the schedule, the Contractor shall ascertain, from the railroad, the lead time required for assembling crews and materials and make due allowance.

No charge or claims of the Contractor against either the Department or the Railroad Company will be allowed for hindrance or delay on account of railroad traffic, work by the Railroad Company or other delays incident to or necessary

for safe maintenance of railroad traffic or any delays due to compliance with these specifications.

107.08.11--Trainman's Walkways. Along the outer side of each exterior track of multiple operated track and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending to a line not less than ten feet from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during work hours while railroad's protective service is provided shall be removed before the close of each work day. If there is any excavation near the walkway, a handrail with ten foot minimum clearance from centerline of track shall be installed.

107.08.12--Insurance. The Contractor shall be required to carry insurance in accordance with Subsection 107.14.2.

107.08.13--Failure to Comply. In the event the Contractor violates or fails to comply with any of the requirements of these specifications, the Railroad Engineer may require that the Contractor vacate railroad property. Any such orders shall remain in effect until the Contractor has remedied the situation to the satisfaction of the Railroad Engineer and the Engineer.

107.09--Construction Over or Adjacent to Navigable Waters and Wetlands. All work on, over or adjacent to navigable waters or wetlands shall be conducted in accordance with permit issued by the controlling authority.

The Department will obtain permits for work over navigable waters and wetlands, and bidders are advised to closely examine the provisions of such permits relative to spoil disposal and water quality considerations and the necessary construction of retention basins, settling ponds, temporary navigation lights, etc. Copies of the permits will be included in the contract documents or available for review at the Jackson and District Offices of the Department.

The Contractor shall conform with all provisions and conditions of the permits.

The permits will only cover work shown on the plans. Should temporary construction be proposed for the Contractor's convenience in the areas set out in the permits, the Contractor shall apply for and furnish a copy of the required permits to the Engineer before proceeding with the temporary construction.

107.10--Barricades, Warning Signs and Flaggers. The Contractor shall provide, erect and maintain all necessary barricades, lights, danger signals, signs and other traffic control devices; shall provide qualified flaggers where necessary to direct the traffic; and shall take all necessary precautions for the protection of the work and the safety of the public. Highways or parts of the work closed to through traffic shall be protected by effective barricades. Suitable warning signs

shall be provided to properly control and direct traffic.

The Contractor shall erect warning signs in advance of all places on the project where operations may interfere with traffic and at all intermediate points where the work crosses or coincides with the existing roadway. Such warning signs shall be constructed and erected in accordance with the provisions of the contract.

All barricades, warning signs, lights, temporary signals, other protective devices, flaggers and signaling devices shall meet or exceed the minimum requirements contained in the MUTCD which is current at the time bids are received.

All traffic control devices on an existing highway, road or street are understood to be public property under the provisions of Subsection 107.12.

On all sections of a project which are coincident with an existing highway, road, or street and open to traffic, the Contractor shall be fully responsible for the protection, maintenance, and replacement of all existing signs, route markers, traffic control signals, and other traffic service features from the beginning of contract time or beginning of work, whichever occurs earlier, until final completion of the work.

The Contractor shall restore or replace in kind, under the provisions of Subsection 107.12, all devices damaged, destroyed or lost by the Contractor.

On or about the effective date of the Notice to Proceed, the Engineer will make an inventory of all traffic service devices with adequate description of each sign, post, message, signal and other devices as a basis for replacement in kind. A copy of the inventory, dated, identified, and signed will be forwarded to the District and Contractor.

Near completion of the work, the Engineer will make another inventory of the traffic control devices and distribute as indicated for the earlier inventory. A list and detail description of the traffic control devices which have been damaged, destroyed or lost and must be replaced in kind by the Contractor will be attached to the inventory. The Engineer will confirm in writing the completion of sign replacement by the Contractor.

Prior to performing work on the project, the Contractor shall make the necessary arrangements to prevent damage or loss of signs and other traffic control devices. Those which cannot be left in their existing positions shall be removed, stored, or reinstalled at locations approved by the Engineer. As soon as work which conflicted with the original position of each device has been performed, the device shall be reinstalled at the original position or modified position as approved by the Engineer.

The Contractor shall maintain in position only those signs that are appropriate for

existing conditions and those that are not or have served their purpose shall be removed or covered as approved by the Engineer. Sign coverings shall be of such material and so placed such that the information contained thereon will not be legible during day or night. The Contractor shall not allow vegetation, construction materials, equipment, etc. to obscure an applicable traffic control device.

No change in posted regulatory speed signs may be made without the written authority of the Department. However, advisory speed plates conforming to the current MUTCD may be used in conjunction with the other standard warning signs provided each posted advisory speed is appropriate for the individual hazard created by construction. All proposed changes in regulatory speeds shall be submitted through the District Engineer and forwarded with any recommendations to the State Traffic Engineer for further handling and consideration by the proper authority.

Unless otherwise provided in the contract, no measurement for payment will be made for materials or work under this subsection, it being understood that the cost thereof is included in the price bid for Maintenance of Traffic or other items of work.

107.11--Use of Explosives. The use of explosives is not permissible under any condition or on any project unless approved in writing by the Engineer. When using explosives, the Contractor shall exercise utmost care not to endanger life and property including the new work. The Contractor shall be responsible for all damage resulting from the use of explosives and shall indemnify and hold harmless the Commission, the Department, and any of its officers or employees.

The Contractor shall comply with all laws and ordinances as well as Title 29 Code of Federal Regulations Part 1926, Safety and Health Regulations for Construction (OSHA), with respect to the use, handling, loading, transportation and storage of explosives and blasting agents.

The Contractor shall notify each property owner and public utility company having structures or facilities in proximity of the explosive work and shall notify all known owners or operators of shortwave radio equipment in the area. Such notice shall be given sufficiently in advance to enable those involved to take steps to protect their property.

107.12--Protection and Restoration of Property and Landscape. The Contractor shall be responsible for the preservation of public and private property and shall protect from disturbance or damage all land monuments, historical markers, and property marks and shall not move them until the Engineer has witnessed or otherwise referenced their location.

The Contractor shall be responsible for all damage or injury to public or private

property of any character resulting from any act, omission, neglect, misconduct, inefficiency, method of executing the work or non-execution thereof or due to defective work or materials and shall indemnify and hold harmless the Commission, the Department, or any of its officers or employees for any such actions or omissions.

The Contractor shall take sufficient precaution to prevent pollution of streams, lakes and reservoirs with any harmful materials including but not limited to fuels, oils, bitumens, calcium chloride, and poisons. The Contractor shall schedule and conduct grading operations, production of materials from material pits or quarry sites exclusive of commercially operated sources, construction of haul roads, hauling operations and other operations so as to prevent or minimize the pollution of adjacent property, ditches, streams, lakes and reservoirs with mineral or organic sediment. Pollution causing injury or damage within the intent of this subsection shall be subject to the restoration requirements and provisions herein set forth.

The Contractor shall restore the property, at no additional costs to the Commission, to a condition equal to that existing before the damage or injury, or shall make good such damage or injury in an acceptable manner.

In case of failure on the part of the Contractor to restore or make good such damage or injury, the Engineer may, upon forty-eight hours written notice, proceed to repair, rebuild or otherwise restore such property and the cost thereof shall be deducted from monies due or which may become due the Contractor. In the event no such monies are available, the amount shall be charged against the Contractor's Surety.

Nothing within this subsection shall be construed to relieve the Contractor from the responsibilities under the requirements of Subsection 107.01.

107.13--Forest Protection. In carrying out work within or adjacent to State or National Forests or other forest areas, the Contractor shall comply with all regulations of the State Fire Marshall, Forestry Commission, Forest Service and all other authority having jurisdiction of the forests and shall observe all sanitary laws and regulations with respect to the performance of work in forest areas. The Contractor shall keep the areas in an orderly condition, dispose of all refuse, obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks and other structures in accordance with the requirements of the Forest Supervisor.

The Contractor shall take all reasonable precaution to prevent and suppress forest fires. The Contractor's employees and subcontractors shall be required to do all reasonably within their power to prevent and suppress forest fires and to notify at the earliest possible moment a Forest Supervisor or other appropriate official of the location and extent of any fire seen by them.

107.14--Damage Claims and Insurance.

107.14.1--Responsibility for Damage Claims. The Contractor shall indemnify and save harmless the Commission, its officers and employees from all suits, actions or claims of any character brought because of injuries or damage received or sustained by person(s) or property resulting from the Contractor's operations; or on account of or in consequence of any neglect in safeguarding the work; or because of any claims or amounts recovered from infringements of patent, trademark, or copyright; or from claims or amounts arising or recovered under the "Workmen's Compensation Act" or any other law, ordinance, order or decree. Money due the Contractor may be retained for the use of the State or Commission or in case no money is due, the Contractor's Surety may be held until such suits, actions or claims for injuries or damages have been settled and suitable evidence to that effect furnished to the Department. Money due the Contractor will not be withheld when satisfactory evidence is produced that the Contractor is adequately protected by public liability and property damage liability insurance.

107.14.2--Liability Insurance.

107.14.2.1--General. The Contractor shall carry public liability and property damage liability insurance of limits not less than: bodily injury --\$100,000 each person, \$200,000 each occurrence; property damage --\$50,000 each occurrence \$250,000 aggregate; automobile liability insurance--\$100,000 each person, \$200,000 each occurrence for bodily injury, and \$50,000 property damage. Each policy shall be signed or countersigned by a Mississippi resident agent of the insurance company.

The Contractor shall have certificates furnished to the Department from the insurance companies providing the required coverage. The certificates shall be on a form acceptable to the Executive Director and show the types and limits of coverage. The Executive Director may request duplicate or certified copies of the policies.

107.14.2.2--Railroad Protective. The following provisions are applicable to all work performed under a contract on, over or under the rights-of-way of each railroad shown on the plans.

The Contractor shall assume all liability for any and all damages to his work, employees, servants, equipment and materials caused by railroad traffic.

Prior to starting any work on railroad property, the Contractor shall furnish satisfactory evidence to the Department that insurance of the forms and amounts set out herein in paragraphs (a), (b) and (c) has been obtained. Also, the Contractor shall furnish similar evidence to the Railroad Company that insurance has been obtained in accordance with the Standard Provisions for General

Liability Policies and the Railroad Protective Liability Form as published in the Code of Federal Regulations, 23 CFR 646, Subpart A. Evidence to the Railroad Company shall be in the form of a Certificate of Insurance for coverages required in paragraphs (b) and (c), and the original policy of the Railroad Protective Liability Insurance for coverage required in paragraph (a).

All insurance herein specified shall be carried until the contract is satisfactorily complete as evidenced by a release of maintenance from the Department.

The Railroad Company shall be given at least 30 days notice prior to cancellation of the Railroad Protective Liability Insurance policy.

For work within the limits set out in this subsection, the Contractor shall provide insurance for bodily injury liability, property damage liability and physical damage to property with a combined amount of \$2,000,000 per occurrence and an aggregate of \$6,000,000 applying separately to each annual period for each of (a), (b) and (c) as set out herein. Bodily injury shall mean bodily injury, sickness, or disease, including death at anytime resulting therefrom. Property damage shall mean damages because of physical injury to or destruction of property, including loss of use of any property due to such injury or destruction. Physical damage shall mean direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment.

- (a) Railroad Protective Liability Insurance shall be purchased on behalf of the Railroad Company by the Contractor. When applicable, AMTRAK shall be included as an additional insured.
- (b) Regular Contractor's Public Liability and Property Damage Insurance, including XCU and automobile, issued in the name of the Contractor shall be so written as to furnish protection to the Contractor respecting the Contractor's operations in performing work covered by the contract. Coverage shall include protection from damages arising out of bodily injury or death and damage or destruction of property which may be suffered by persons other than the Contractor's own employees.
- (c) When the Contractor sublets a part of the work to a Subcontractor, the Contractor shall secure insurance protection in their own behalf under Contractor's Protective Public Liability and Property Damage Insurance, including XCU and automobile, to cover any liability imposed on them by law for damages because of bodily injury or death and damage or destruction of property as a result of work undertaken by a Subcontractor.
- **107.15--Third Party Beneficiary Clause.** It is not intended by any of the provisions of the contract to create the public or any member thereof as a third party beneficiary or to authorize any one not a party to this contract to maintain a

suit for personal injury or property damage pursuant to the provisions of this contract. The duties, obligations and responsibilities of the parties to this contract with respect to third parties shall remain as imposed by law.

107.16--Opening Sections of Project To Traffic. If the project is not already open to traffic in accordance with the provisions of Subsection 104.04, at the option of the Executive Director, all or any part may be opened to traffic. The Department will install the traffic control devices necessary for the safety and convenience of traffic. Maintenance of traffic expense will be borne by the Department, or the Contractor will be compensated in accordance with Subsection 109.04 if ordered to provide maintenance of traffic. Opening sections of a project to traffic in accordance with this subsection will be in writing and will not constitute acceptance of the work, or any part thereof, or a waiver of any provision of the contract.

All damage to the highway, including damage or defacement of traffic control devices furnished and erected by the Department, which is the fault of the Contractor shall be repaired or replaced at the expense of the Contractor.

If the Contractor is dilatory in completing shoulders or other features of work, the Executive Director may order all or a portion of the project open to traffic as set out herein; but in such event the Contractor shall not be relieved of liability and responsibility during the period the work is so opened prior to release of maintenance. The remainder of the Contractor's construction operations shall be conducted as to cause the least obstruction to the safe and convenient movement of traffic

107.17--Contractor's Responsibility for Work. Until release of maintenance in accordance with Subsection 105.16, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage by action of the elements or from any other cause, whether arising from the execution or the nonexecution of the work. The Contractor shall rebuild, repair, restore and make good, in accordance with the requirements of the contract, all injuries or damages to the work occasioned by any of the above causes before release of maintenance and shall bear the expense thereof.

If the Engineer determines the work has been properly prosecuted, constructed, protected and maintained and significant damage to the work is determined to be caused by unforeseeable occurrences beyond control of and without the fault or negligence of the Contractor, including but not restricted to acts of nature, of the public enemy or of governmental authorities, the Contractor will be paid for repairing such damage at the contract unit prices for applicable items involved in making repairs.

When contract items are not applicable to repair of work damaged from such cause, a supplemental agreement may be entered into or such repairs may be

accomplished under the provisions of Subsection 109.04, Extra and Force Account Work.

If the Engineer determines that such repair work has not been properly prosecuted and maintained or determines that the Contractor has not taken all reasonable measures to provide adequate protection for partially completed or completed repair work, payment for repairs will not be made.

Damage to items of construction, caused by the traveling public on a project or section(s) of a project open to traffic, shall be repaired by the Contractor. The Contractor will be paid for repairing such damage to <u>certain</u> acceptably installed items of construction at the contract unit price(s) for the applicable item(s) used in the repair. An acceptably installed item shall be complete-in-place meeting the requirements of the specifications. The acceptably installed items of construction eligible to receive payment for repair of damage caused by the traveling public shall be items used for signing, safety and traffic control. The eligible items shall be limited to traffic signal systems, signs and sign supports, lighting items, guard rail items, delineators, impact attenuators, median barriers, bridge railing or permanent pavement markings. If damage to the above items necessitate only minor repairs, in lieu of total replacement, the work shall be performed in accordance with Subsection 109.04, or as directed by the Engineer. Damage not meeting the requirements to qualify for repair payment shall be repaired at no additional cost to the Commission.

In case of suspension of work from any cause whatsoever, the Contractor shall be responsible for the work and shall take the precautions necessary to prevent damage to the work, provide for normal drainage, erect necessary temporary structures, signs or other facilities; shall maintain the work in such a manner as to fully carry out the responsibility for maintaining traffic as required under the contract; shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the contract, and shall take adequate precautions to protect new tree growth and other vegetative growth against injury. Except when the suspension is ordered by the Engineer for the sole benefit of the Department, all such protection and maintenance shall be preformed by the Contractor without additional cost to the State.

107.18--Contractor's Responsibility for Utility Property and Services. Where the Contractor's operations are adjacent to or coincide with properties of railroad, telegraph, telephone, power companies and other utility services and damage to said utility might result in considerable expense, loss or inconvenience, work shall not commence until all arrangements necessary for the protection thereof have been made.

All work to be performed within 50 feet either side of the centerline of any railroad track shall be executed in such manner and at such time that interference

with the movements of trains or traffic upon the tracks of the Railroad Company is held to a minimum. The Contractor will be required to use all reasonable care and precaution in order to avoid accidents, damage, or unnecessary delays which would interfere with the Railroad Company's trains or other property.

The Contractor shall cooperate with the owners of all underground and overhead utility lines in the removal and rearrangement operations in order that these operations may progress in a reasonable manner and that duplication of rearrangement work may be reduced to a minimum and services rendered will not be unnecessarily interrupted.

In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper authorities and cooperate in the restoration of service. No work shall be undertaken around fire hydrants without approval of the local fire authority.

The Contractor is advised of Section 45-15-1, et seq., Mississippi Code of 1972, regarding the performance of work in the proximity of high voltage overhead power lines. It is the Contractor's responsibility to comply with those statutory requirements.

107.19--Furnishing Rights-of-Way. The Department will be responsible for the securing of all necessary rights-of-way in advance of construction. Exceptions will be indicated in the contract.

107.20--Personal Liability of Public Officials. In carrying out the provisions of the contract or exercising the authority granted by or within the scope of the contract, there shall be no liability upon the Commission, Engineer or authorized representative or any officers or employees of the Commission, either personally or as officials of the State; it being understood that in all such matters they act solely as agents and representatives of the State.

107.21--No Waiver of Legal Rights. The Commission shall not be precluded or estopped by any measurement, estimate or certificate made either before or after the completion and acceptance of the work and payment therefor from showing the true amount and character of the work performed and materials furnished by the Contractor, nor from showing that any such measurement, estimate or certificate is untrue or is incorrectly made, nor that the work or materials do not in fact conform to the contract. The Commission shall not be precluded or estopped, notwithstanding any such measurement, estimate or certificate and payment in accordance therewith, from recovering from the Contractor or the Contractor's Sureties, or both, within the provisions of the laws of the State of Mississippi such damage as may be sustained by reason of failure to comply with terms of the contract. Neither the acceptance by the Commission or the Department or any representative nor any payment for or acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by

the Department shall operate as a waiver of any portion of the contract or of any power herein reserved or of any right to damages. A waiver of any breach of the contract shall not be held to be a waiver of any other subsequent breach.

The Commission reserves the right to correct an error in any estimate that has been paid and to adjust to meet the requirements of the contract and specifications. Upon conclusive proof of error or collusion or dishonesty between the Contractor or the Contractor's agents and the Engineer or the Engineer's representative being discovered after final payment has been made, the Commission reserves the right to claim and recover by process of law, sums as may be sufficient to correct the error or make good the defects in the work resulting from such errors, dishonesty or collusion.

107.22--Environmental Protection. In addition to the applicable provisions of Subsections 107.01 and 107.12, occupancy by the Contractor of any lands, whether on or off the right-of-way, for the performance of any work under the contract, or preparation therefore, shall be contingent upon provisions being made and carried out for the prevention or minimization of siltation, pollution from soil erosion, and air pollution. Accordingly, it is the intent of the contract that erosion be prevented by the establishment of all necessary temporary and permanent erosion control features as the work progresses from beginning to completion. The primary objective shall be to establish and maintain all permanent erosion control features as soon as possible. Until such time, each operation shall include the effective use of temporary measures as necessary to maintain ground surface conditions so as to prevent or minimize siltation or pollution.

107.22.1--Contractor's Protection Plan. At the preconstruction conference or prior to starting any work on the project, the Contractor shall submit to the Engineer for approval, an erosion control plan to supplement permanent erosion control work required under the contract. As a minimum, the plan shall include the following:

- 1. Plan profile sheets, 11" x 17" or larger, of the entire project showing the locations of erosion control devices (pay items) such as silt fence, hay bales, silt basins, slope drains, etc. Also, showing the locations of other Contractor absorbed measures such as brush barriers, diversion berms, etc. that the Contractor may elect to use to prevent siltation.
- 2. A plan for disposal of waste materials, if applicable.
- 3. A detailed schedule of operations at locations of high siltation potential to clearly indicate how siltation of streams, lakes and reservoirs and the interruption of normal stream flows will be held to a practical and feasible minimum.

The plan shall be updated as needed during the progress of the project. Work shall not be started until an erosion control plan is approved by the Engineer.

The Engineer will have the authority to suspend all work and/or withhold payments for failure of the Contractor to carry out provisions of the erosion control plan and/or proper maintenance thereof.

107.22.2--Clearing and Grubbing, Haul Roads, Waste Areas, Plant Sites or Other Areas Occupied by the Contractor. Clearing and grubbing on erodible areas, construction and maintenance of haul roads, plant sites or other areas occupied by the Contractor in connection with the work shall include adequate protection for preventing excessive erodible material from entering water or waterways on land not occupied by the Contractor and preventing dust created by hauling equipment.

Temporary measures as necessary shall be employed by the Contractor from the beginning of the work. These measures may consist of the expeditious use of brush, vegetation or other residue from clearing and grubbing, temporary or permanent terraces, berms, dikes, dams, sediment basins or other effective means of containing sediment. All temporary or permanent erosion control features shall be maintained in an effective manner so long as essential to the abatement of siltation.

After temporary features are no longer useful or needed, such features shall be removed and the area restored or prepared for subsequent work. All temporary protection shall be the responsibility of the Contractor, and measurement for direct payment will not be made unless otherwise provided in the contract.

Unless otherwise determined by the Engineer from a study of overall job conditions, the exposed surface area of erodible material at any one time for each of the separate operations of this subsection shall not exceed 750,000 square feet without prior approval by the Engineer.

In addition to the applicable requirements of the Mississippi Department of Environmental Quality, Office of Pollution Control, the burning of waste vegetation resulting from site or right-of-way clearing shall meet the following requirements:

- (a) Starter and auxiliary fuels must not cause excessive visible emissions. Rubber tires, etc. are prohibited.
- (b) Must be permitted by local ordinance.
- (c) The burning must be conducted at least 500 yards from an occupied dwelling; this restriction may be reduced to 50 yards if forced draft air is provided for combustion.

(d) The burning must be conducted at least 500 yards from commercial airport property, private airfields or marked aircraft approach corridors except when a lesser distance is authorized by the airport authority.

- (e) Must not produce a traffic hazard.
- (f) Burning will not be allowed during a High Fire Danger Alert issued by the Mississippi Forestry Commission or an Emergency Air Pollution Episode Alert issued by the Mississippi Department of Environmental Quality, Office of Pollution Control.

107.22.3--Pit Operations. The Contractor shall schedule, arrange and conduct pit operations in such a manner to prevent siltation or pollution of ditches, streams, lakes, reservoirs and adjacent property with sediment, fuels, oils or other objectionable materials.

107.22.4--Structures, Grading, and Other Construction. The Contractor shall perform all work required under the contract in such manner and with such protective features to control and contain siltation within the limits of the work. Performance in the designated or directed sequence and the providing of all erosion protection for which pay items are not included in the contract shall be considered as included in prices bid for other items of work.

The Contractor shall prevent or minimize undesirable siltation in connection with excavation, construction and backfill of structures. Such temporary measures as are indicated herein for clearing and grubbing or other measures such as covering of excavated materials, lining channels, constructing bulkheads or other effective measures shall be employed.

The Engineer will limit the areas of excavation, borrow, and embankment operations commensurate with the Contractor's capability and progress in keeping the finish grading, seeding, mulching, and other such permanent erosion control measures current. Should seasonal limitations make such coordination unrealistic, temporary erosion control measures shall be used to the extent feasible and justified. The exposed surface area of erodible material at any one time for each grading operation shall not exceed 750,000 square feet without prior approval by the Engineer.

The Engineer may increase or decrease the areas of erodible material to be exposed at any one time by clearing and grubbing, excavation, borrow and fill operations as determined by analysis of project conditions.

It is the intent of these specifications that the work shall proceed in a manner and sequence to ensure the earliest possible establishment of permanent erosion control items.

107.22.5--Special Temporary Erosion Control. The plans may designate special temporary erosion control work such as fast growing grasses or other designated temporary features for problem areas during grading, paving or other construction work. Unless otherwise provided, quantities for such temporary features shown on the plans will be included in items for which bids are to be received. The Contractor shall perform all designated temporary work as indicated on the plans or provided in the contract or as directed by the Engineer at the time and in the manner deemed to provide the most effective deterrent to siltation.

Any emergency temporary erosion control will be authorized and used only under conditions or causes created solely by the State or unforeseeable causes beyond the control of the Contractor. The Engineer shall be the sole judge as to the use and payment of emergency temporary erosion control work. Unforeseen special emergency erosion control features not contemplated in the plans or contract documents and determined by the Engineer to be essential for the prevention of siltation and pollution for conditions or causes created solely by the State or unforeseeable causes beyond the control of the Contractor shall be performed as Extra Work.

107.22.6--All Operations. It shall be fully understood that nothing in this subsection shall be construed in any manner to relieve the Contractor from any of the responsibilities for the establishment of permanent roadside development items and other permanent work specified for erosion control in the sequence and manner included in other provisions and requirements of the contract.

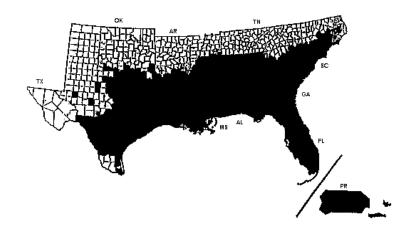
107.22.7--Quarantine Information. At the request of the U. S. Department of Agriculture, plant pest control information concerning domestic quarantines is cited as follows:

The entire state of Mississippi has been quarantined for the Imported Fire Ants. Soil and soil-moving equipment operating in the state will be subject to plant quarantine regulations. In general, these regulations provide for cleaning soil from equipment before it is moved from the state. Complete information may be secured from the State of Mississippi Department of Agriculture and Commerce, Bureau of Plant Industry, P. O. Box 5207, Mississippi State, Mississippi 39762-5207, Telephone 662-325-3390.

IMPORTED FIRE ANT QUARANTINES

The following regulated articles require a certificate or permit for movement:

- Soil, separately or with other things, except soil samples shipped to approved laboratories*. Potting soil is exempt, if commercially prepared, packaged and shipped in original containers
- 2. Plants with roots with soil attached, except houseplants maintained indoors and not for sale.
- 3. Grass sod.
- 4. Baled hay and straw that have been stored in contact with the soil.
- 5. Used soil-moving equipment.
- 6. Any other products, articles, or means of conveyance of any character whatsoever not covered by the above, when it is determined by an inspector that they present a hazard of spread of the imported fire ant and the person in possession thereof has been so notified
- * Information as to designated laboratories, facilities, gins, oil mills, and processing plants may be obtained from an inspector.



Conditions of Movement.

Counties entirely colored are completely regulated; Counties partially colored are partially regulated.

Regulated Area.

Restrictions are imposed on the movement of regulated articles as follows:

From colored areas into or through white areas.

Contractors should consult their State or Federal plant protection inspector or County Agent for assistance regarding exact areas under regulation and requirements for moving regulated articles. For detailed information, see 7 CFR 301.81 for quarantine and regulations.

107.23--Material Pits. The Contractor is reminded of the Mississippi Surface Mining and Reclamation Act and the Rules and Regulations adopted to implement this act. Questions or problems concerning the Act or the Rules and Regulations should be directed to the Mississippi Department of Environmental Quality, Office of Geology, Jackson, Mississippi.

Prior to opening a new pit or enlarging an existing pit, the Contractor will furnish the Engineer either a copy of the "Notification of Exempt Operations" or a copy of the (permanent or temporary) Class II Permit approval from the Mississippi Department of Environmental Quality, Office of Geology. The Contractor shall also obtain a letter stating that the pit site is satisfactory from an archaeological and historical standpoint from the Mississippi Department of Archives and History, Historic Preservation Division, Jackson, Mississippi. All costs involved in obtaining clearance shall be borne by the Contractor. Delays encountered in obtaining clearance will not be a reason for extension of contract time. This requirement is not applicable to commercial sources.

When the contract requires the Contractor to dispose of excavated material, the Contractor shall, prior to removal, furnish the Engineer with a copy of a letter from the land owner stating that the Contractor has the right to place material on the said property. The Contractor shall also furnish the Engineer with a letter stating that the property is not in a wetland. Delays encountered in obtaining this information will not be a reason for extension of contract time. This requirement is not applicable to commercial sources.

The Contractor is further reminded of and shall comply with the requirements of the Clean Water Act Amendments requiring National Pollutant Discharge Elimination System (NPDES) permits for discharges composed entirely of storm water from active or inactive surface mining operations, excluding work areas covered by a U. S. Army Corps of Engineers Clean Water Act Section 404 Permit. Questions or problems concerning NPDES permits should be directed to the Mississippi Department of Environmental Quality (MDEQ), Office of Pollution Control, Industrial Branch, Jackson, Mississippi.

The Contractor shall, before a regulated area is opened or enlarged as a material pit, obtain from MDEQ the necessary Mining Storm Water NPDES Permit(s) authorizing the discharge of storm water subject to the terms and conditions of said permit. The Contractor shall furnish the Engineer a copy of the MDEQ NPDES permit. All costs involved in obtaining the permit(s) shall be borne by the Contractor. Delays encountered in obtaining the permit(s) will not be a reason for extension of contract time.

For regulated commercial sources, the owner(s) shall bear the responsibility for meeting the requirements of the NPDES permitting process.

107.24--Construction Noise Abatement. The Contractor shall comply with all state and local sound control and noise level rules, regulations and ordinances which apply to any work performed pursuant to the contract.

Each internal combustion engine, used for any purpose on the work or related to the work, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without such muffler.

107.25--Hazardous and/or Toxic Waste Procedures. No matter how extensive a field investigation, the possibility exists that hazardous and/or toxic wastes on a site will go undetected until excavation is initiated. If underground storage tanks (USTs), buried containers, hazardous and/or toxic substances are uncovered, or even suspected, during construction, work in this area shall be immediately discontinued and measures taken to protect susceptible nearby wetlands or ground-water sources, and the Engineer shall be immediately notified.

It is essential that the suspected hazardous substances be left in place until they have been identified. The Contractor shall make every effort to prevent the Contractor's personnel, State personnel and the general public from becoming exposed to substances that may be hazardous or toxic. Once contaminated soil or debris has been removed from the ground and leaves the site, it is considered a hazardous waste if the concentration exceeds regulatory levels. In such cases, the Contractor becomes a hazardous waste generator.

Disposition of all underground storage tanks (USTs), containers, hazardous and/or toxic waste shall be in accordance with current rules and regulations of the Department of Environmental Quality, Office of Pollution Control.

The Contractor shall report to the Engineer and the Office of Pollution Control any evidence or conditions which may cause suspicion that a waste site of hazardous or toxic materials and/or containers or USTs has been located within right-of-way limits of the construction project. Work shall cease immediately at such suspected site and shall not resume until directed by the Engineer.

When the Contractor is required to perform additional work to dispose of such waste, containers and/or USTs, payment will be made at contract unit prices which are applicable to the work and/or as provided in Subsection 109.04 when the contract does not include appropriate pay items.

The Department reserves the right to use other forces for exploratory work to identify and determine the extent of hazardous and/or toxic waste. Should the disposition of such material require special procedures by certified personnel, the Department will make arrangements with qualified persons to dispose of the material.

When the existence of USTs are known in advance of construction activity, the Contractor shall give the Office of Pollution Control written notification 30 days in advance of removal.

When an underground storage tank contains or has been used for containment of a regulated substance and the Contractor is required to remove such tank in accordance with the provisions of Subsection 104.05, the Contractor shall not use "flotation" as a method of removal.

SECTION 108 - PROSECUTION AND PROGRESS

108.01--Subletting of Contract.

108.01.1--General. The total value of all work performed by the Contractor's own organization shall be no less than 40 percent of the value of the remaining work after subtracting the contract value of the specialty items from the value of the original contract.

The Contractor's "own organization" shall be construed to include workmen employed and paid directly, owned or rented equipment and trucks that are classed as owner-operator.

All items that have been selected as specialty items will be listed as such in contract documents.

The Contractor shall not sublet any portion of the contract or work provided therein, except the furnishing of necessary materials, without the approval of the Executive Director. Approval to sublet any portion of the contract or work to a Contractor that the Department refuses to issue a proposal, in accordance with Section 102, will not be granted.

Consideration will be given to requests to sublet a portion of the total value of a contract pay item. When the Contractor proposes to sublet a portion of a pay item, the Contractor's request shall be accompanied by a breakdown of the costs

of the various components of each pay item, including haul if applicable, that is proposed to be sublet by part.

Computation of the percentage of the work sublet shall be based on the contract price of each item or in the case of subletting a part of a pay item, the percentage shall be based on the amount acceptably established by the Contractor.

The simple expediency of carrying the workmen of one contractor on the prime Contractor's or approved subcontractor's payroll to avoid subcontracting will not be permitted.

If evidence and investigation establish that a violation of the subcontract requirement is being attempted through subterfuge whereby one contractor's equipment is leased to the prime Contractor, except as provided in Subsection 108.01.2, or the workmen of one contractor are placed on the payroll of the prime Contractor, the Executive Director will take such action as deemed appropriate under the provisions of the contract and may suspend the bidding qualifications of those found to be in violation for a period of up to one year. This provision does not include the lease or use of equipment from a corporation or company wholly owned by the prime Contractor.

Subcontracting does not release the Contractor of bond and contract liability and shall not be construed to imply that a contract exists between the Department and a third party.

The Contractor must pay subcontractor(s) for satisfactory performance of their contracts no later than 15 calendar days from receipt of payment from the Department. Within 15 calendar days after receiving payment from the Department for work satisfactorily performed, the Contractor shall make prompt payment to all sub-contractors or material suppliers for all monies due. Within 15 calendar days after receiving payment from the Department for work satisfactorily completed, the Contractor shall promptly return all retainage monies due to all sub-contractors or material suppliers.

108.01.2--Work Performed by Equipment Rental Agreement. Work may be performed by equipment operated under Department approved rental agreements independent of the provisions of Subsection 108.01.1.

Trucks which may be licensed for operation on the highways of Mississippi are excluded from prior approval of rental agreements under this provision. For other equipment prior approval of a rental agreement shall be obtained in writing before the equipment is used on the work. Consideration for approval will be made by the Resident or Project Engineer, District or Central Office depending on the nature and scope of the proposed rental agreement and the administrative procedures established by the Department.

At least one of the following qualified conditions is a prerequisite for approval of equipment rental:

- (a) Equipment may be rented from a dealer or firm in the business of selling, renting or leasing equipment when the firm or dealer is not a highway contractor or subcontractor. In the event, the dealer or firm is a contractor or subcontractor, consideration for approval will be given under one of the subsequent conditions.
- (b) Equipment may be rented from another contractor provided such contractor does not have a contract with the Department or an approved subcontract; or the Contractor or Subcontractor is maintaining satisfactory progress on all work under contract or subcontract, and the equipment proposed to be rented is not essential to the maintenance of satisfactory progress.
- (c) An occasional piece of equipment may be rented from any party for valid reasons such as breakdown of Contractor owned equipment, temporary need for equipment not normally anticipated for the type of work to be performed or for temporary need for special equipment not normally owned for the type of work involved.

For any work proposed to be performed by rental equipment, the Contractor shall in advance of such use notify the Resident or Project Engineer on the Department's Standard Equipment Rental Request form. The notification shall contain a list and description of equipment, the name of the supplier, the rental rate to be paid, the estimated time use, and the affirmation shown on the form.

In no circumstance shall a Contractor be entitled to any damages for rental or rental rates of equipment where the advanced notification is not given to the Resident or Project Engineer, and the failure to provide the advanced notice shall constitute a waiver of any such claims.

Lease-rental agreements shall provide reimbursement based on time or in the case of trucks: ton, cubic yard, ton-mile, cubic yard-mile, etc. Equipment and operators, if included, shall be under the sole direction of the Contractor in the performance of the work.

If approval has been granted for renting equipment from a contractor that has work under contract or subcontract with the Department and the progress on the other work becomes unsatisfactory, the approval shall become null and void. Continued work with the rented equipment shall not be performed except under qualified approval in writing by the Executive Director.

108.02--Notice to Proceed. The Contractor shall not begin construction on any feature of the work before a Notice to Proceed is issued.

The anticipated dates of the Notice to Proceed (NTP) and the Beginning of Contract Time (BCT) will be specified in the proposal. Work performed between the NTP and BCT will not be chargeable as contract time.

If the Department delays the issuance of the Notice to Proceed, the Beginning of Contract Time will automatically be adjusted equal to the number of calendar days of the delay. When the revised date falls on Sunday or a holiday the following day will be the Beginning of Contract Time. The contract time will be extended automatically as provided in Subsection 108.06, and the Department will furnish the Contractor a revised progress schedule as provided in Subsection 108.03.1.

Upon written request from the Contractor and if circumstances permit, the Notice to Proceed may be issued at an earlier date subject to the conditions stated therein and with no revisions in the progress schedule or contract time dates. The Contractor shall not be entitled to any monetary damages or extension of contract time for any delay claim or claim of inefficiency occurring between the issuance of the Notice To Proceed issued prior to the date stated as the Beginning of Contract Time.

Failure of the Contractor to commence work by the date specified for the beginning of contract time or within a reasonable time thereafter may be cause for annulment of the contract.

108.03--Prosecution and Progress.

108.03.1--Progress Schedule. The Department will furnish the Contractor a progress schedule developed for the determination of contract time which may be used as the contract progress schedule, or the Contractor's own proposed progress schedule may be submitted for approval; see Subsection 105.07 for two contracts within the same area. The schedule will be in the form of a bar graph indicating the controlling phases of work, the bid sheet sequence numbers of all pay items in each phase, and the beginning and ending time for each phase. At least one phase of work will be shown to begin not later than the date for beginning of contract time, and at least one phase of work will be shown to be in progress until all work is scheduled to be completed.

If the Contractor elects to furnish a progress schedule for approval by the Engineer, it should be furnished promptly after award of the contract. The progress schedule shall be on the same form and in the same format as the one furnished by the Department. Blank forms are available from the Department at a nominal cost. In preparing said progress schedule, the Contractor may show more but not less than the number of controlling phases shown on the Department schedule, and the "miscellaneous" phase shall be identical to the one shown on the Department schedule. It is desirable to keep the number of phases to the minimum practicable for satisfactorily controlling the progress of the work

and assessment of contract time by the Engineer.

The Contractor's progress schedule shall reflect a realistic rate of prosecution with all work to be completed within the specified contract time. In preparation of said progress schedule, the Contractor shall take into consideration all controlling factors and specified limitations.

In the event the Contractor has not submitted an approvable progress schedule by the time of the preconstruction conference, the progress schedule prepared by the Department and furnished the Contractor shall be the approved progress schedule under the same conditions as if submitted by the Contractor.

An approved progress schedule shall be in effect until the date on which a revised schedule is approved. The approved progress schedule will be the basis for establishing major construction operations, contract time assessment and for checking the progress of the work.

108.03.2--Preconstruction Conference. Prior to commencement of the work, a preconstruction conference shall be held for the purpose of discussing with the Contractor essential matters pertaining to the prosecution and satisfactory completion of the work. The Department will arrange for utility representatives and other affected parties to be present.

If it is requested by either the Contractor or the Engineer, arrangements will be made for their authorized representatives to inspect the project site with plans in hand and carefully observe pertinent conditions relating to the project, including the status of right-of-way, utilities and any other special features.

At the preconstruction conference, the Contractor's proposed progress schedule may in the discretion of the Engineer be approved, rejected, or revisions may be suggested or ordered. If the schedule is to be revised, the progress schedule furnished by the Department shall be in effect until the revisions have been made and the schedule approved.

108.03.3--Commencement and Execution of Work. The work shall begin as set out in the contract documents or approved progress schedule or as directed and shall be prosecuted at the rate necessary to insure its completion within the contract time. During the progress of the work, the Engineer shall be notified sufficiently in advance of the time the Contractor expects to undertake particular features of construction to permit the required layout and inspection. Should particular phases of the work be discontinued by the Contractor, the Engineer shall be notified at least 24 hours in advance of resuming operations.

All work covered by a supplemental agreement shall not commence until the supplemental agreement has been properly executed by all parties.

108.04--Limitations of Operations.

108.04.1--General. Work requiring the presence or services of Department personnel will not be permitted on Sunday, New Year's Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, unless the Engineer determines that an emergency or necessity exists. Work on these days, in lieu of supplemental equipment and labor, solely to complete the project within contract time will not be considered a necessity or emergency.

Drainage and minor structures shall be completed ahead of grading to insure proper setting and curing, thorough compaction of backfill, and improved soil conditions for proper embankment construction.

If the Contractor initiates construction on a greater portion of the work than is necessary for proper prosecution or is carrying on operations to the prejudice of work already started, the Engineer may require the Contractor to finish the work in progress before additional portions are started. Work shall be conducted in the manner and sequence necessary to provide for public convenience and safety as set out in Subsection 107.07.

108.04.2--Night Work. When early completion of a particular phase of construction is for public benefit or in the case of emergencies, the Engineer may permit construction after daylight hours unless specifically prohibited by the contract. If night work is permitted, the Contractor shall provide sufficient illumination to satisfy the requirements of Section 680, and the work performed under these conditions shall comply in every respect with the terms and conditions of the contract.

108.04.3--Temporary Suspension of Work. The Engineer will have the authority to suspend the work wholly or in part for as long as necessary because of unsuitable weather, unusually heavy traffic, conditions unfavorable for the satisfactory prosecution of the work, failure of the Contractor to carry out instructions or to perform all provisions of the contract. If it becomes necessary to stop work for an indefinite period, the Contractor shall store all materials so they will not obstruct or impede the traveling public or become damaged in any way. The Contractor shall take every precaution to prevent damage or deterioration of the work, provide suitable drainage of the roadway and erect temporary structures where necessary. Contract time will not be charged for phases of suspended work except during suspension for failure to carry out instructions of the Engineer. Additional compensation will not be paid because of such suspension, except as provided below. The Contractor shall not suspend work without written authority from the Engineer.

If the performance of all or any portion of the work is suspended or delayed by the Engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the

Contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the Contractor shall submit to the Engineer in writing a request for adjustment within seven (7) calendar days of receipt of the notice to resume work. The failure of the Contractor to submit the written report within the seven-day period officially constitutes a waiver of any claims for additional time or damages. The request shall set forth the reasons and support for such adjustment.

Upon receipt, the Engineer will evaluate the Contractor's request. If the Engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the Engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The Contractor will be notified of the Engineer's determination whether or not an adjustment of the contract is warranted.

No contract adjustment will be allowed unless the Contractor has submitted the request for adjustment within the time prescribed.

No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this contract.

108.05--Character of Workers, Methods, and Equipment. The Contractor shall employ competent and efficient laborers, mechanics, or artisans. Whenever an employee is deemed to be careless or incompetent, obstructs the progress of the work, is intemperate, uncooperative or disorderly, the Contractor shall, upon written request of the Engineer, discharge or otherwise remove said employee from the work and shall not reemploy such person without the written consent of the Engineer.

The methods used in performing the construction, and all equipment, tools and machinery shall be subject to the approval of the Engineer before and during construction. All equipment, tools and machinery used shall be maintained in a satisfactory working condition.

The measure of the capacity and efficiency of machinery and equipment shall be its actual performance on the work. Should it become apparent that the progress of construction is such that the Contractor will be unable to complete the work with the available equipment within contract time, additional equipment meeting the approval of the Engineer may be required.

Permission to use alternative equipment or methods may be granted when it is of a new or improved type, and its use is deemed by the Engineer to be in

furtherance of the intent of these specifications. Continued use shall be contingent upon the capability to produce work consistently equal to, or better than, that which can be produced with the equipment or method specified.

Nothing in this subsection shall relieve the Contractor of the responsibility for producing work of the quality specified in the contract. Should the Contractor continue to employ or re-employ such unsatisfactory person or persons as herein described, fail to furnish suitable and sufficient machinery, equipment or forces for the proper prosecution of the work, all estimates may be withheld until the Engineer's orders are complied with, or the contract may be declared defaulted as hereinafter provided.

108.06--Determination and Extension of Contract Time.

108.06.1--Based on Time Units.

108.06.1.1--General. Unless otherwise indicated in the contract, contract time will be established on a time unit basis. The span of time allowed for the completion of the physical features of work included in the contract will be indicated in the contract documents as total number of time units allowed and will be known as "Contract Time." The completion date will not be specified but will be determined by the number of time units allowed for completing the work

The span of time allowed in the contract is based on the quantities used for comparison of bids. If satisfactory fulfillment of the contract requires performance of work in greater quantities than those set forth in the proposal, the time allowed for completion will be increased in time units in the same ratio that the cost of the added work, exclusive of the cost of work altered by Supplemental Agreement for which a time adjustment is made for such altered work in the Supplemental Agreement, bears to the total value of the original contract unless it can be established that the extra work was of such character that it required more time than is indicated by the money value. In such cases, reasonable time will be allowed. Original contract value and/or time shall be understood to include work and/or time added or removed by supplemental agreement.

During the months of December, January and February, Time will only be assessed in the miscellaneous phase, unless otherwise specified in the contract.

Except as required for the miscellaneous phase assessment, time will not be charged for Saturdays, Mississippi legal holidays as defined in the contract, and other Department recognized holidays unless the Contractor performs work. Time charges for Saturdays or the noted holidays will be assessed only to the phases on which the Contractor actually works.

Except as required for the miscellaneous phase assessment, time will not be

charged for Sundays, even though the Contractor is permitted or required to perform work as provided by the contract.

Time will not be charged during any required waiting period for placement of permanent pavement markings as set forth in Subsection 618.03 provided all other work is complete except growth and coverage of vegetative items as provided in Subsection 210.01.

108.06.1.2—Contract Time Assessment. The time required to complete the work has been determined by using time units from one of the columns in the following TABLE OF TIME UNITS. Column A will be used for projects consisting primarily of earthwork; Column B will be used primarily for base and pavement projects; Column C will be used for projects consisting primarily of bridges and structures; and Column D will be used primarily for overlay projects. The column applicable to the contract will be indicated in the contract documents.

TABLE OF TIME UNITS

Month	Column A	Column B	Column C	Column D
January	5	5	6	7
February	5	7	8	9
March	9	9	11	13
April	13	14	14	17
May	17	19	19	19
June	19	20	22	19
July	21	22	23	18
August	21	22	23	18
September	20	20	22	17
October	15	17	17	15
November	10	11	11	12
December	5	4	4	6
Calendar Year	160	170	180	170

Allocation of time units for a fractional part of a month will be computed as a proportion of the listed time units for the applicable month.

Time unit assessment will be based on soil and weather conditions and other specific conditions cited in the contract. The Engineer will determine on each applicable day the extent that each work phase in progress could have been productive, regardless of whether the Contractor worked on that phase.

When the Contractor worked or could have worked eight hours or more on a phase, a maximum of eight hours will be shown as productive hours available for

that phase.

A phase will not be considered for assessment unless at least four consecutive satisfactory hours are available prior to noon. If the Contractor elects to work on such a day, time will only be assessed in the phase(s) in which the Contractor actually works.

The "miscellaneous" phase will not be considered a controlling phase and used in the assessment of time units except when shown as the only phase in progress. Under this condition, time units, monthly time units divided by monthly calendar days, will be assessed in accordance with the applicable column in the TABLE OF TIME UNITS.

Time unit assessment for controlling phases will be based on the Average Value per Time Unit (AVTU) of each phase that should be in progress. Time unit assessment for each phase will begin on the time unit number shown on the approved progress schedule for the beginning of the phase; or if work is commenced on a phase earlier than shown on the progress schedule, time unit assessment will begin on the first day of an estimate period following the previous period in which 15 percent of the value of a phase has been earned except a phase shall not commence in the months of December, January and February.

The AVTU of each controlling phase will continue to be included in the determination of available time units until the physical features of the phase have been satisfactorily completed or until the approved progress schedule indicates an interval of no activity. When the nature of the work requires the phase to be split, time charges in the phase will cease when the work in a portion of the phase has been completed, and will re-start when the items of the work in the next portion of the phase begin. If work has not begun in the next portion of the phase, time charges will begin when the time unit number shown on the approved progress schedule for the beginning of the next portion of the phase has been met or exceeded when rounded to the tenth of a time unit.

When the Engineer determines that a controlling phase has been completed as indicated above and there are no other controlling phase(s) in progress at that time, time units will be assessed based on the AVTU of the next immediately scheduled phase(s).

For each day during the contract time, except Sundays and Saturdays and holidays on which the Contractor does not work, the ratio of the AVTU of each phase scheduled to be in progress to the total AVTU of all the phases scheduled to be in progress will be determined. Each ratio thus determined will be multiplied by the satisfactory hours available for the respective phase.

The product thus determined for each phase will be the proportionate productive

hours for that phase. The proportionate hours for each phase will be added and the sum divided by eight with the quotient rounded to the nearest one-tenth (0.1). This number will be the time unit assessment for that day unless the number before rounding is less than two-tenths (0.2) and the assessment is assigned as zero (0.0) time units.

The Engineer will maintain a daily cumulative assessment of available time units throughout the duration of contract time. When the cumulative time unit assessment is equal to the total number of allowed time units, contract time shall expire.

Each month the Engineer will furnish the Contractor with a report showing the number of available time units assessed during the estimate period and the cumulative time unit assessment to date. The Contractor should review the Engineer's report as to the accuracy of the assessment and confer with the Resident or Project Engineer to rectify any differences. Each should make a record of the differences, if any, and conclusions reached. In the event mutual agreement cannot be reached, the Contractor will be allowed a maximum of 15 calendar days following the ending date of the monthly report in question to file a protest Notice of Claim in accordance with the provisions of Subsection 105.17. Otherwise, the Engineer's assessment shall be final unless mathematical errors of assessment are subsequently found to exist, and any claim of the Contractor as to such matter shall be waived.

The percentage elapsed time will be calculated as a direct ratio of the time units assessed to the total time units provided in the contract, or as modified by supplemental agreement.

The percent of completion of the work will be determined by the ratio of the value of the part of the work accomplished to the total contract amount, or amount as modified by supplemental agreement.

When the progress of the work lags more than 20 percent behind the approved progress schedule or the schedule becomes unrealistic because soil and weather conditions have permitted work on some phases and not on others, the Contractor should immediately submit a revised schedule for approval in order that the Engineer's daily assessment will be based on a more realistic schedule. The beginning date for the revisions on the schedule shall be the beginning date of the next report period after the submission. The revised progress schedule shall be accompanied by a written statement from the Contractor indicating any additional equipment, labor, materials, etc. to be assigned to the work to ensure completion within contract time. The total allowed time units shown on the revised progress schedule shall not exceed the total allowed time units in the original contract. Approval of the revised progress schedule shall in no way be construed as a waiver of the provisions of Subsection 108.07. In the event the Contractor does not submit an approvable revised progress schedule, the progress

schedule in effect will continue to be used for the daily assessment of time units.

108.06.1.3--Extension of Time. If the Contractor finds it impossible, for reasons beyond the Contractor's control, to complete the work within the contract time or as extended in accordance with this subsection, the Contractor may, prior to the expiration of the Contract Time as extended, make a written request to the Engineer for an extension of time, justifying the granting of the request. The Contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the Engineer finds that the work was delayed because of conditions beyond the control and without the fault of the Contractor, the time for completion may be extended in such amount as the conditions justify.

Revision to the contract time will be determined by adding the number of time units representing the calendar days of delay to the number of time units at the time of the extension.

If the completion of the project is extended into a season of the year in which completion of certain items would be prohibited or delayed because of seasonal or temperature limitations, the Engineer may waive the limitations provided the completion of the work will not result in reduced quality. When determined that completion of the items out-of-season will cause a reduction in the quality of the work, the completion of the project will be further extended so the items may be completed under favorable weather conditions. In either case, the Engineer will notify the Contractor in writing.

108.06.1.4--Cessation of Contract Time. When the Engineer by written notice schedules a final inspection, time will be suspended until the final inspection is conducted and for an additional 14 calendar days thereafter. If after the end of the 14-day suspension all necessary items of work have not been completed, time charges will resume. If a project is on liquidated damages at the time a final inspection is scheduled, liquidated damages will be suspended until the final inspection is conducted and for seven (7) calendar days thereafter. If after the end of the 7-day suspension all necessary items of work have not been completed, liquidated damages will resume. When final inspection has been made by the Engineer as prescribed in Subsection 105.16 and all items of work have been completed, the daily time charge will cease.

108.06.2-Based on Calendar Date Completion.

108.06.2.1--General. Contract Time will be established on the basis of a Completion Date, as indicated in the contract. The span of time allowed for the completion of the physical features of work included in the contract will be indicated in the contract documents and will be known as "Contract Time."

For contracts in which a Completion Date is specified, the span of Contract Time shall be determined by the number of Calendar Days allowed in the contract

between the date for the beginning of Contract Time and the Specified Completion Date or revised date for beginning of Contract Time and the revised Specified Completion Date in accordance with the provisions of the contract.

The span of time allowed in the contract as awarded is based on the quantities used for comparison of bids. If satisfactory fulfillment of the contract requires performance of work in greater quantities than those set forth in the proposal, the time allowed for completion shall be increased in Calendar Days in the same ratio that the cost of such added work, exclusive of the cost of work altered by Supplemental Agreement for which a time adjustment is made for such altered work in the Supplemental Agreement, bears to the total value of the original contract unless it can be established that the extra work was of such character that it required more time than is indicated by the money value.

The Contractor shall provide sufficient materials, equipment and labor to guarantee the completion of the project in accordance with the plans and specifications within the Contract Time.

At any given date, the ratio of the accumulated monetary value of that part of the work actually accomplished to the total contract bid amount adjusted to reflect approved increases or decreases shall determine the "percent complete" of the work.

The percentage elapsed time shall be calculated as a direct ratio of the expired Calendar Days to the total Calendar Days provided for in the contract.

No extension of the Specified Completion Date will be granted except as provided herein, and, except for abnormal delays caused solely by the State or other governmental authorities, or unforeseeable disastrous phenomena of nature of the magnitude of earthquakes, hurricanes, tornadoes, or flooded essential work areas which are deemed to unavoidably prevent prosecuting the work.

Any revision of the Specified Completion Date provided for in the contract will be made automatically on the Specified Completion Date as established in the contract, and at a later date if additional conditions so warrant.

In the event the Engineer determines that the completion date when extended as provided in the contract would cause certain items of work or portions thereof, properly prosecuted in the normal sequence and manner, to fall within a period of seasonal or temperature limitations, the Engineer will make a determination as to the scope of unavoidable delays, if any, contemplated because of such seasonal or temperature limitations for periods in excess of those contemplated in the original contract. The Executive Director may thereupon establish a revised contract completion date by notifying the Contractor and the Contractor's Surety in writing of such established completion date as warranted by the engineering determination.

Liquidated Damages as set forth under the heading "Per Calendar Day" in the "Schedule of Deductions for Each Day of Overrun in Contract Time," Subsection 108.07, shall be applicable to each Calendar Day after the Specified Completion Date, or authorized extension thereof, and until all work under the contract is completed.

Progress Schedule referred to in Subsection 108.03 will not be required.

108.07--Failure to Complete the Work on Time. When the Contractor fails to complete the work within the time stipulated or as extended under the provisions of the contract, a deduction calculated from the daily charges listed in the schedule will be made from money due the Contractor not as a penalty but as liquidated damages. The daily charges set out in the schedule of liquidated damages are based on an approximate average cost to the Department for maintaining engineers, inspectors and other employees. The Contractor and the Contractor's Sureties shall be liable for all liquidated damages in excess of money due the Contractor.

Schedule of Deductions for Each Day of Overrun in Contract Time

Original Cont	Daily Charge		
From More Than	To and Including	Per Calendar Day	
\$ 0	100,000	\$ 140	
100,000	500,000	200	
500,000	1,000,000	300	
1,000,000	2,000,000	400	
2,000,000	5,000,000	650	
5,000,000	10,000,000	750	
10,000,000		1,400	

The applicable daily charge will be made for each calendar day after the expiration of contract time. Daily charges will not be made during any required waiting period for placement of permanent pavement markings as set forth in Subsection 618.03 provided all other work is complete and during specified growth and coverage of the vegetative items as provided in Subsection 210.01.

108.08--Default and Termination of Contract. The contract may be terminated by the Executive Director for any of the following reasons:

- (a) Failure to proceed with the work when so instructed by the Department or to adhere to the requirements of the contract.
- (b) Failure to perform the work with sufficient workmen, equipment and materials to assure completion within contract time.
- (c) Performing unacceptable work, or neglecting or refusing to remove

materials or to perform anew such work as may be rejected as unacceptable.

- (d) Discontinuing the prosecution of the work.
- (e) Violation of labor provisions and special regulations.
- (f) Becoming insolvent, being declared bankrupt or committing any act of bankruptcy or insolvency.
- (g) Allowing a final judgment to stand unsatisfied.
- (h) Making an assignment for the benefit of creditors.
- (i) Failure for any other cause whatsoever to carry on the work in an acceptable manner.

Before the contract is terminated, the Contractor and Surety will be notified in writing by the Executive Director of the conditions which make termination of the contract imminent. If, for any reason, written notice cannot be delivered to the Contractor, notice of termination may be given by publication in a newspaper in the county in which the project is located. When there is no such newspaper, the notice may be given by publication in a newspaper located in Hinds County. If no effective effort has been made by the Contractor or Surety to correct the conditions of which complaint is made within 15 calendar days after notice is given, the Executive Director may declare the contract terminated and notify the Contractor and Surety accordingly.

Upon receipt of notice from the Executive Director that the contract has been terminated, the Contractor shall immediately discontinue all operations.

After termination, the Executive Director will order the Surety to arrange for the prosecution of the work. If the Surety does not proceed with the satisfactory prosecution of the work within 20 calendar days from the date on which the contract was terminated, the Executive Director may proceed by either readvertising and awarding the contract, or proceed in any other lawful manner which will provide for the completion of the work as planned and set forth in the contract. The Surety or the Department, at the Surety's expense, will perform or arrange for necessary maintenance between the date of termination and the date that work is resumed.

When the work is finally completed, the total cost to the Department will be computed. If the total cost is greater than the cost which would have resulted at the original contract unit prices, the extra expense will be the responsibility of the original Contractor's Surety. If the total cost is less than the cost which would have resulted at the original contract unit prices, the savings will be paid to the

original Contractor's Surety.

108.09--Termination of Contract for Reasons Other Than Default. The Department may, by written order, terminate the contract or any portion thereof after determining that for reasons beyond either Department or Contractor control the work as originally contracted cannot be completed and termination would therefore be in the public interest. Such reasons for termination may include, but need not be necessarily limited to, executive orders of the President relating to war or national defense, national or area emergencies which create a serious shortage of materials, orders from duly constituted authorities relating to energy conservation, and restraining orders or injunctions obtained by third-party citizen action resulting from environmental protection laws or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor.

For contract purposes "Area Emergency" shall be understood to be an emergency created by an acute shortage of materials, supplies, labor, or equipment within an area in which the project is located and termed usually as the "Trade Area." Specifically for the purpose of this provision, the "Area" under consideration shall be understood to be the area from which the Executive Director determines the Contractor would reasonably obtain materials, supplies, labor, or equipment, respectively.

When the Department orders termination of a contract effective on a certain date under this subsection, all completed items of work as of that date will be paid for at the contract unit price. Payment for partially completed work will be made either at agreed prices or by force account as provided in Subsection 109.04.

Acceptable materials which have not been incorporated in the work, may, at the option of the Department, be purchased at actual cost delivered to a prescribed location, or otherwise disposed of as mutually agreed.

After receipt of Notice of Termination under this subsection from the Department, the Contractor shall, within 60 days of the effective termination date, submit a claim for additional damages or costs not covered herein or elsewhere in these specifications. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, bidding and project investigative costs, overhead expenses attributable to the project, legal and accounting charges involved in claim preparation, subcontractor costs not otherwise paid for, actual idle labor cost if work is stopped in advance of termination date, guaranteed payments for private land usage as part of original contract, and any other cost or damage item for which the Contractor feels reimbursement should be made. The intent of negotiating this claim would be that an equitable settlement be made with the Contractor. Loss of anticipated profits will not be considered as part of a settlement.

The Contractor's cost records shall be make available to the extent necessary to determine the validity and amount of each item claimed.

Termination of a contract or portion thereof will not relieve the Contractor or Surety of contractual responsibilities for the work completed.

108.10--Termination of Contractor's Responsibility. The contract will be considered complete when all work has been satisfactorily completed, the final inspection made, the work accepted by the Executive Director, and the final estimate paid. When the Executive Director writes the formal letter of acceptance, the Contractor will be released from further obligation except as set forth in the contract bond or as provided by law.

SECTION 109 - MEASUREMENT AND PAYMENT

109.01--Measurement of Quantities. The measurement and determination of quantities for each pay item will be made in general as prescribed hereinafter, and specifically as set out under Method of Measurement and Basis of Payment for each respective pay item. Actual authorized quantities of work, complete and accepted under the contract, will be measured by the Engineer according to United States standard measures, and in accordance with well recognized engineering practices. Unauthorized wastage of material will be deducted and only quantities actually incorporated in the completed work or ordered to be wasted will be included in the final estimate.

A station when used as a definition or term of measurement will be 100 linear feet

Unless otherwise specified, longitudinal measurements for area computations will be made horizontally, and no deductions will be made for individual fixtures having an area of nine square feet or less. Unless otherwise specified, transverse measurements for area computations will be the neat dimensions shown on the plans or ordered by the Engineer.

Where the area unit for measurement and payment is specified for erosion control items, the measurements will be taken on the slope of the ground to compute the actual surface area for payment.

Structures will be measured according to neat lines shown on the plans or as altered to fit field conditions.

All items which are measured by the linear foot, such as pipe culverts, guardrail, underdrains, etc., will be measured as specified under the Method of Measurement for the item unless otherwise shown on the plans.

No payment will be made for unauthorized excavation. Excavation or embankment performed beyond the required neat lines or slope stakes will not be measured for payment unless within tolerances specified or otherwise provided.

In computing volumes of excavation and embankment, the average end area method will be used, unless otherwise specified.

The thickness of plates and galvanized sheets used in the manufacture of corrugated metal pipe, metal plate pipe culverts and arches, and metal cribbing will be specified and measured in decimal fractions of inches as shown in AASHTO Designation: M 36 or M 167.

When size number is used in the measurement of wire, it will mean the size number specified in AASHTO Designation: M 32.

The term ton will mean the short ton consisting of 2000 pounds avoirdupois. All materials which are specified for measurement by the ton shall be weighed by competent personnel on approved scales set at locations approved by the Engineer or in the case of prepackaged materials, the manufacturer's bag weight may be used. If material is shipped by rail, the car weight may be accepted provided it is the actual weight of material and not minimum car weight used for assessing freight tariff. However, car weights will not be acceptable for material to be used in mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily at such time as the Engineer directs, and each truck shall bear a plainly legible identification mark.

Timber, except timber piling, will be measured by the thousand feet board measure (MBM) actually incorporated in the structure. Measurement will be based on nominal widths and thicknesses and the length of each piece.

When a complete structure or structural unit, in effect "lump sum" work, is specified as the unit of measurement, the unit will be construed to include all necessary fittings and accessories.

Volumes of materials computed in cubic yards by the average end area method are designated as "Final Measure" (FM), or "Final Measure - Embankment" (FME). Volumes of materials designated for measurement loose in the vehicle are designated as "Loose Vehicle Measure" (LVM).

Volumetric measurement of excavation, embankment, granular materials or similar materials in cubic yards will be made by the methods designated on the plans or in the proposal. For justifiable reasons, such as impracticability of measurement of volumes (usually small) by the designated method, the Engineer may order measurement by another method as follows:

(a) Volumes designated for payment by FM may be measured LVM and

converted to contract measurement by multiplying the loose measure by 80 percent.

- (b) Volumes designated for payment by LVM may be measured in its original position by the average end area method and multiply the FM measure by 125 percent.
- (c) Volumes designated for payment by FME may be measured in its original position by the average end area method and multiply the FM measure by 90 percent.
- (d) Small volumes of surplus, excess excavation or other small volumes of excavation which are impractical to measure by the average end area method but are designated to be measured by FME may be measured LVM and multiply the loose measure by 72 percent.

When the Engineer orders the use of a conversion factor for converting a unit of measure, the ordered method of measurement shall be deemed acceptable to all parties and shall be final.

When the average end area method is indicated, other three-dimensional measurements of the prismoid occupied by the material in its natural position before removal or in its final position in the embankment may be used.

When requested by the Contractor and with written approval of the Engineer, material specified to be measured by the cubic yard or ton may be converted to the other measure as appropriate. Factors for this conversion will be determined by the Engineer and agreed to by the Contractor before such method of measurement is used.

All materials measured by the cubic yard LVM shall be hauled in approved vehicles and verified at the point of delivery. Vehicles may be of any size or type acceptable to the Engineer provided the body is of such shape that the capacity may be readily and accurately determined to the whole cubic yard in accordance with Department SOP. Unless all vehicles on the work are of uniform capacity, each vehicle must be plainly labeled to indicate its measured capacity. All vehicles shall be legibly numbered for identification.

The vehicles shall be loaded to ensure a water level load when they arrive at the point of delivery. Loads hauled in unapproved vehicles and loads of a quantity less than the measured quantity for the hauling vehicle, will be subject to rejection.

Bituminous materials will be measured by the gallon or ton. Volumes will be measured at 60° F or corrected to the volume at 60° F using tables in Department SOP.

109.02--Scope of Payment. The compensation, as herein provided, constitutes full payment for the complete work including all materials, labor, tools, equipment and incidentals necessary for performing the work contemplated and embraced under the contract; for all loss or damage arising out of the nature of the work; for all loss from the action of the elements, except as otherwise provided; for any unforeseen difficulties or obstruction of the work which may arise or be encountered during the prosecution of the work until its final acceptance by the Engineer; for all risks connected with the prosecution of the work; for all expenses incurred by or in consequence of suspension or discontinuance of the work; for any infringement of patents, trademarks or copyrights; and for completing the work in an acceptable manner according to the plans and specifications.

If the "Basis of Payment" clause for a specific pay item requires that the contract unit price be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the specifications.

The payment of any current estimate, prior to final acceptance of the work by the Executive Director, shall in no way constitute an acknowledgment of the acceptance of the work, nor in any way affect the obligation of the Contractor to repair or renew defective parts of the work. The Engineer will be the judge of defects or imperfections, and the Contractor shall be liable to the Department for failure to correct same as provided herein.

109.03--Compensation for Altered Quantities. Whenever the quantity of a pay item is increased or decreased from the original contract quantity, payment will be made on the basis of the actual quantity completed at the contract unit price or as modified by supplemental agreement.

109.04--Extra and Force Account Work. Extra work performed in accordance with the requirements and provisions of Subsection 104.03 will be paid for at the unit prices or lump sum stipulated in the agreement authorizing the work, or the Executive Director may require the Contractor to do such work on a force account basis to be compensated in the following manner:

- (a) **Labor.** The Contractor will receive the rate of wage or scale agreed upon in writing for each hour that the foreman in direct charge of the specific operations and labor are actually engaged in such work. An amount will be added equal to 15 percent of the sum thereof.
- (b) **Bond, Insurance and Tax.** For property damage, liability, and workmen's compensation insurance premiums, unemployment insurance contributions and social security taxes on the force account work, the Contractor will be reimbursed actual cost only. The Contractor shall furnish satisfactory evidence of the rate or rates paid for the bond,

insurance and tax.

(c) **Materials.** The Contractor will receive the actual cost of the materials, including transportation charges if paid by the Contractor, exclusive of machinery rentals as hereinafter set forth, plus 15 percent.

(d) **Equipment.** For any machinery or special equipment, other than small tools, authorized by the Engineer, the Contractor will receive the rates agreed upon in writing.

In the event an agreement cannot be reached for a particular piece of equipment, the pamphlet entitled "Construction Equipment Ownership and Operating Expense Schedule, Region III" as published by the Department of Army, U S Army Corps of Engineers and is current at the time the force account work is authorized will be used to determine equipment ownership and operating expense rates. These rates do not include allowances for operating labor, mobilization or demobilization costs, overhead or profit, and do not represent rental charges for those in the business of renting equipment. Operating labor and overhead cost will be allowed. Subject to advance approval of the Engineer, actual transportation cost for a distance of not more than 200 miles will be reimbursed for equipment not already on the project. The cost of transportation after completion of the force account work will be reimbursed except it cannot exceed the allowance for moving the equipment to the work.

The hourly use rates are computed on the basis of a 40-hour work week. When the Contractor works more than 40 hours per week, the cost for "Cost of Facilities Capital" (CFC) will be excluded from the hourly rate for those hours in excess of 40 hours per week.

No more than eight hours of standby will be paid during a 24-hour day, nor more than 40 hours per week. Standby time will not be allowed unless the equipment has been in idle status in excess of 16 hours during a 24-hour day. Likewise, standby will not be allowed during periods when the equipment would have otherwise been in idle status or when equipment could reasonably have been used on other parts of the project. Actual operating time during a week will be credited against the 40 hours maximum standby allowance.

All equipment shall be subject to approval from day to day in accordance with the requirements of Subsection 108.05.

(e) **Miscellaneous.** No allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

(f) Compensation. No extra work on a force account basis will be paid unless unit prices for labor, materials and equipment rentals have been agreed upon in writing, or as otherwise provided for equipment in paragraph (d), before work is started. The unit prices paid shall not exceed the quoted unit price for each item stipulated in the agreement.

The Contractor, or the Contractor's authorized representative, and the Engineer shall compare records of extra work done on a force account basis at the end of each day. Copies of these records shall be made upon the form provided for this purpose and shall be certified to by the Contractor and the Engineer. The Contractor shall furnish to the Engineer itemized statements of the cost of all force account work. The statements shall include a true copy of the payroll and the original receipt of bills and invoices for the material used and the freight charges paid on same. Where materials used are not specifically purchased for use on extra work but taken from the Contractor's stock, the Contractor may submit an affidavit of the quantity, price and freight on these materials. Statements covering force account work for each specific agreement shall be submitted promptly at the end of the month in which the work was actually completed. Failure to timely submit such information shall constitute a waiver if any claim for monetary damage.

109.05--Eliminated Items. Any item found unnecessary for the proper completion of the work may, upon written order of the Engineer, be eliminated and in no way invalidate the contract. When the Contractor is notified of the elimination of an item, the Contractor will be reimbursed for the actual work and all costs including mobilization of materials prior to the notification as provided in Subsection 104.02.

109.06--Partial Payments.

109.06.1--General. Monthly estimates will be authorized by the Engineer provided the amount due on completed work is no less than \$1,000.00 including advancement on materials. The estimate will be prepared by the Engineer on the day of the month prescribed by the Commission. Partial payment based on estimated quantities and computed at contract unit price will be made on or about the day prescribed by the Commission.

If defective work and/or materials are discovered or reasonable doubt arises as to the integrity of any part of the work for which partial payment has been allowed, a deduction from subsequent estimates in an amount equal to the value of the defective or questioned work will be made until the defects have been remedied or the causes for doubt removed.

Each month the Contractor receives a monthly progress estimate, the Contractor shall review the Engineer's progress estimate as to the accuracy of the quantities. Should the Engineer's estimated quantity for any pay item be greater than a

tolerance of plus or minus ten percent ($\pm 10\%$) of the Contractor's estimated quantity, the Contractor shall confer with the Resident or Project Engineer to rectify any differences. Each should make a record of the differences, if any, and conclusions reached. In the event mutual agreement cannot be reached, the Contractor will be allowed a maximum of 15 calendar days following the ending date of the monthly estimate in question to file in writing, a protest Notice of Claim in accordance with the provisions Subsection 105.17. Otherwise, the Engineer's estimated quantities shall be considered acceptable pending any changes made during the checking of final quantities and any claim by the Contractor shall be considered to have been waived.

109.06.2--Advancement on Materials. Partial payments may include advance payment for certain nonperishable or durable materials with approval of the Engineer. Advance payment may be requested for structural steel members provided fabrication has been completed and the members have been declared satisfactory for storage by a Department representative. The Contractor must make a written request for payment and furnish written consent of the Surety. To qualify for advance payment, materials must be stored or stockpiled on or near the project or at other locations approved by the Engineer; or in the case of precast concrete members, treated timber, guard posts and other approved preprocessed durable and bulky materials, the materials may be stored at the commercial producer's yard provided it is located in Mississippi; or in the case of prestressed concrete members that may require being produced at an out-of-state location, the prestress members shall be produced and may be stored at the commercial manufacturer's yard provided it is a PCI certified plant on the Department's List of Approved Prestress & Precast Plants and it is located within the continental United States; or in the case of structural steel members that may require fabrication at an out-of-state location, the fabricated members may be stored at the location of the commercial fabricator's yard provided it is located within the continental United States. When allowed, advance payment will be based on verified actual material cost plus transportation charges to the point of storage. Sales tax, local haul and handling costs shall not be included as material cost

Advancements will not be allowed until the Project Engineer has received triplicate copies of material invoices and certified test reports or acceptable certificates of conformance, and in the case of materials stored at the commercial producer's/fabricator's yard, the material shall be positively identified for the specific project and a Certificate of Storage issued by the State Materials Engineer, another designated Department employee or a designated representative of the Department. Requests for advancements on fabricated structural steel members and prestress concrete members stored out-of-state will be denied when the Department does not have available a designated representative to issue a Certificate of Storage.

The Contractor shall make suitable arrangements to the satisfaction of the

Engineer for storage and protection at approved sites or, in the case of materials stored at the commercial producer's yard located in Mississippi or, in the case of fabricated structural steel members stored at the commercial fabricator's yard or prestress concrete members stored at a commercial manufacturer's yard located within the continental United States, the Contractor shall make arrangements with the producer/fabricator for suitable storage and protection. If advanced payment is allowed and the materials are damaged, lost, destroyed or for any reason become unacceptable, the previous payments will be deducted from subsequent estimates until the materials are replaced or restored to an acceptable condition. In all cases, the Contractor shall save harmless the Commission in the event of loss or damage, regardless of cause.

Advanced payment will not be made on living or perishable plant materials or seeds until planted.

Unless specifically provided for in the contract, advance payment will not be made on materials, except for fabricated structural steel members or prestress concrete members, stored or stockpiled outside of the State of Mississippi.

Materials for which an advanced payment has been allowed must be paid for by the Contractor within 60 days of the estimate on which the advanced payment was first allowed and proof of said payment must be verified by the supplier. If proof of payment is not furnished within the allowable 60 days, the advanced payment will be deducted on subsequent current estimates until such time proof of payment is furnished.

As the materials are incorporated into the work, proportionate reductions for advance payments shall be made from monthly estimates covering the work performed. Calculation of percentage of completion, or rate of progress, shall be based on completed work and no consideration will be given to stockpiled materials.

109.06.3--Retainage. Regardless of the value of the earned work based on the value of work scheduled for completion by the approved progress schedule, no deduction for retainage will be made from payments and advancement of materials due to the Contractor. Likewise, the Contractor shall not withhold any retainage from any payments due to a Subcontractor or Supplier.

109.06.4--Withholding of Estimates. An estimate may be withheld indefinitely until all directives of the Engineer, given in compliance with and by virtue of the terms of the contract, have been complied with by the Contractor.

109.07--Changes in Material Costs. Because of the uncertainty in estimating the costs of petroleum products that will be required during the life of a contract, an adjustment in compensation for certain materials may be allowed when provisions are included in the contract. When the pay item on the bid sheets

indicated that an adjustment is allowed, an adjustment will be provided as follows:

<u>Bituminous Products</u> -- Each month the Department will acquire unit prices from producers or suppliers who supply the State highway construction industry with bituminous products. The average of all quotes for each product will serve as the base price for contracts let in the subsequent month.

<u>Fuels</u> -- Selected cash price quotations for bulk gasoline and diesel fuel will be taken from <u>Platt's Oilgram PAD 2 and PAD 3</u>. The appropriate adjustment per gallon for gasoline and diesel fuel will be added to the quotations to allow for taxes and markups. The prices thus determined will serve as the base prices for contracts let in the subsequent month.

The established base prices for bituminous products and fuels will be included in the contract documents under a Notice to Bidders entitled "Petroleum Products Base Prices For Contracts Let In (Month and Year)."

Each month thereafter the Engineer will be furnished with the current monthly prices. Adjustments for change in cost will be determined from the difference in the contract base prices and the prices for the period that the work is performed and for the quantities completed. Adjustments may increase or decrease compensation depending on the difference between the base prices and prices for the estimate period.

The adjustments will be determined for the quantities of bituminous products and the average fuel requirements for processing a unit of work as set forth herein.

COST ADJUSTMENT FACTORS FOR FUEL USAGE

Item of Work	<u>Units</u>	Code	<u>Diesel</u>	Gasoline
Excavation & Embankment, Except Structure and Foundation	gallons/cubic yard	(E)	0.29	0.15
Granular Materials, Stabilizer Aggregates or Coarse & Seal Aggregates	gallons/cubic yard or gallons/ton	(GY) (GT)	0.88 0.62	0.57 0.40
Subgrade & Base Mixing Items	gallons/square yard	(M)	0.044	0.028
Hot Mix Asphalt (HMA)	gallons/ton	(B)	2.57	0.78
Asphalt Drainage Course	gallons/square yard	(D)	0.49	0.15

Portland Cement Concrete

Base & Pavement gallons/square yard (C) 0.11 0.15

Bridge Items, Structural Concrete, Pipe Culverts, Including Foundation & Structural Excavation and all other Concrete related items

gallons/\$1000 (S) 11.0 13.0

CONSTRUCTION MATERIALS

The items and quantities subject to compensation adjustment:

ADJUSTMENT CODE

- (A1) Asphalt for HMA mixture -- theoretical gallons based on job mix formula, unit weight of 8.43 pounds per gallon, and new asphalt only for recycled HMA mixture.
- (A2) Asphalt for Surface Treatment -- pay quantity in gallons.
- (A3) Asphalt for Prime -- pay quantity in gallons.
- (A4) Asphalt for Curing Seal -- 0.25 gallons per square yard.
- (A5) Asphalt for Bituminous Treated Roving -- 0.50 gallons per square yard.
- (A6) Asphalt for Asphalt Drainage Course -- theoretical gallons per square yard based on job mix formula and unit weight of 8.43 pounds per gallon.

Any difference between checked final quantity and the sum of quantities shown on the monthly estimates for any item will be adjusted by the following formula:

$$FA = (FCQ - PRQ) \times EA$$

Where: FA = Final Adjustment

FCQ = Final Checked Quantity

PRQ = Total Quantity Previously Reported on Monthly Estimate

EA = Total Adjustment Shown on Monthly Estimate

The final adjustment is to consider any error(s) that may have been made in the computations of monthly adjustments.

After the expiration of contract time, including all authorized extensions, adjustments will be computed using fuel and material prices that are in effect at

the expiration of contract time.

109.08--Contract Overpayment(s). The Contractor is duly responsible to and will immediately reimburse the Mississippi Transportation Commission, without any demand therefore, for any overpayment(s) of which it has knowledge, or through due diligence, should have knowledge.

By the execution of the contract, the Contractor also agrees that if the Mississippi Transportation Commission has made any overpayment(s) to the Contractor on any previously executed contract(s), the Mississippi Transportation Commission may notify the Contractor in writing of the nature and the amount of the overpayment(s). If the Contractor fails to remit the overpayment(s) to the Mississippi Transportation Commission within sixty (60) calendar days from the date of such notice, interest shall accrue from the date of such notification until payment is made in full at the rate of one percent (1%) per month until fully paid.

By the execution of the contract, the Contractor also agrees that the Mississippi Transportation Commission may offset and withhold a sum equal to any overpayment(s) on any previously executed contract(s), plus interest, where applicable, against any sums due the Contractor under the terms of this contract or any other active contract(s).

By the execution of the contract, the Contractor also agrees that if any overpayment(s) are made by the Mississippi Transportation Commission to the Contractor under the terms of this contract the Mississippi Transportation Commission shall have the right to offset and withhold that amount, plus interest, where applicable, from any sums which the Mississippi Transportation Commission might owe the Contractor on any other active contract(s) or any future executed contract(s).

109.09--Freight Rates and Labor Rates. No allowance or deduction will be made for increases or decreases in freight rates or demurrage or for any increase or decrease in labor rates unless so stipulated in the contract.

109.10--Blank.

109.11--Acceptance and Final Payment. When the work has been accepted by the Executive Director, a final estimate showing the value of the work will be prepared by the Engineer as soon as the necessary final measurements and computations can be made. The amount of this estimate, less all previous payments and deductions required under the contract, will be paid to the Contractor as soon as practicable. Final payment will not be made until written consent of the Contractor and the Surety has been delivered to the Contract Administration Engineer of the Department. It shall be the Contractor's responsibility to have the Surety provide the consent. Delays in final payment because of non-receipt of Surety's consent shall not be cause for the payment of

interest under the provisions of Section 31-5-27 of the Mississippi Code, 1972, Annotated, for the period of time occasioned by such delay.

Acceptance by the Contractor of final payment shall operate as and shall be a release to the Commission from all claims or liability under the contract and any act or neglect of the Commission relating to or connected with the contract.

109.12--Right to Audit. The Department reserves the right to audit the Contractor's records at any time during the contract period and up to three years after the final contract payment or up to three years after any litigation is filed with court, whichever is later. If the Department commences an audit, the Contractor will be required to provide sufficient original documents and records to satisfy the Department's Audit Division or other appropriate individual that the costs included in the Contractor's claim were incurred and are appropriate for payment under the terms of the contract and solely in performance of the referenced project and project phase and were not incurred on any other project or phase of the referenced project that the Contractor is constructing or has constructed. Department's audit will be conducted in accordance with United States General Accounting Office's Governmental Auditing Standards, the Institute of Internal Auditor's Professional Practice Standards, and the American Institute of Certified Public Accountant's Auditing Standards.

SECTION 110 - REQUIRED CONTRACT PROVISIONS

110.01--Application. Projects constructed without Federal funds.

110.01.1--Statements and Payrolls. The submission by the Contractor of weekly payrolls, or copies thereof, is not required. However, each Contractor and Subcontractor shall preserve weekly payroll records for a period of three years from the date of contract completion. All contractor personnel working at the project site will be paid unconditionally and not less often than once a week without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by regulations, the full amounts of wages and bona fide fringe benefits due at time of payment.

The payroll records shall contain the name, address, social security number, classification, rate of pay, daily and weekly number of hours worked, itemized deductions and actual wages paid to each employee.

Upon request, the Contractor will make payroll records available at the project site for inspection by the Department Contract Compliance Officer or authorized representative and will permit such officer or representative to interview employees on the job during working hours.

The Contractor and Subcontractors shall submit Form CAD-880, "Weekly

Summary of Wage Rates", each week to the Project Engineer. The forms may be obtained from the Contract Compliance Officer, Contract Administration Division, Mississippi Department of Transportation, Jackson, Mississippi. Custom forms, approved by Contract Administration Division, may be used in lieu of CAD forms.

110.02--Application. Projects constructed with Federal funds.

110.02.1--Statements and Payrolls. The Contractor and Subcontractors shall submit weekly two copies of all payrolls to the Project Engineer and meet the requirements of U. S. Department of Transportation Form FHWA 1273, on projects constructed in whole or in part with Federal funds.

The Contractor and sub-contractors shall submit two copies each of Form CAD-880," Weekly Summary of Wage Rates", and CAD-881, "Weekly Statement of Compliance", each week to the Project Engineer. The forms may be obtained from the Contract Compliance Officer, Contract Administration Division, Mississippi Department of Transportation, Jackson, Mississippi. Custom forms, approved by Contract Administration Division, may be used in lieu of CAD forms.

110.02.2--Wage Rates. All persons employed or working upon the site of the work will be paid at wage rates not less than those contained in the wage determination decision of the Secretary of Labor in effect at time of advertisement for bids and/or contained in the contract.

110.02.3--Classification. The Department Contract Compliance Officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination.